Inc. Rudd

THE EXCELLENCY OF Monarchical Government, Especially of the English Monarchy;

WHEREIN

Is largely Treated of the several BENEFITS of KINGLY GOVERNMENT, and the INCONVENIENCE of COMMONWEALTHS.

ALSO OF

The several *Badges* of SOVEREIGNTY in General, and particularly according to the CONSTITUTIONS of our LAWS.

LIKEWISE OF

The *Duty* of SUBJECTS, and the *Miſchiefs* of FACTION, SEDITION and REBELLION.

In all which

The PRINCIPLES and PRACTICES of our late COMMONWEALTHSMEN are Conſidered.

By NATHANIEL JOHNSTON Dr. in *Phyſick*.

Decet timeri Cæſarem, at plus diligi.
Senec. Octav.

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TO THE

KING.

SIR,

WHile every one ſtrives to out-do each other in the Preſents they make, as Teſtimonies of their unbounded Wiſhes, That Your Majeſty may ſee many and many happy Years: I preſume to lay this Treatiſe, *Of the Excellency of the Engliſh Monarchy*, at Your Sacred Feet, as the beſt Expreſſion of that Veneration I owe to Majeſty; at leaſt, the beſt my ſmall Capacity enables me to render. Which I am the rather emboldned to, ſeeing that, where *Monarchy* is the Theme, an humble Recourſe for Patronage ſeems owing to none leſs than a *King*; or Application to be made to any leſs than the Beſt of *Princes*, to countenance a Diſcourſe of the Beſt of *Governments*. My want of Skill to copy all the Beauties of the *Engliſh Monarchy*, (an Excellency no Hand can pretend to) will not, I hope, leſſen the Eſteem of the Subject. But the falling ſhort of ſetting out its Inimitable Perfections, will leave Your Majeſty a large Field to exerciſe that Divine Vertue and Property of a King, to Forgive. All that a Writer can perform in a Subject of this Nature, is, to give an Hiſtorical Account of the Riſe, Progreſs, and Conſtitution of the Government; to ſhew the Admirable Order and Firmneſs of its Compoſition; to collect the Real, Solid, and Certain Be-

nefits ariſing from it; which are beſt Illuſtrated, by comparing it with all other Syſtems of Government, and reflecting, as well upon the weak Foundations, and unfortunate Iſſue, as the long Series of Inconveniences which ever attend them; eſpecially that which is *Anti-monarchical* and *Popular*. This is the Province of an Author, and my Aim in this *Treatiſe*. But to demonſtrate the Practical Excellence of our *Monarchy*, is the buſineſs of the *Monarch*; and will be the peculiar Advantage of Your Majeſt'ys Reign, to carry the Honour of this *Nation* higher, than any thing I could copy from the Records of your moſt Famous Anceſtors, and moſt Heroic Predeceſſors. So that it is my greateſt comfort (next to the hopes of Your Majeſtie's gracious Acceptance of theſe my Endeavours) that thoſe more able Pens, who ſhall undertake to tranſmit to *Poſterity*, the *Memorials* of Your Majeſtie's happy Reign, will fall ſhorter of the *Original*, than perhaps I have done: For as their Abilities will exceed mine, ſo will their Subject be incomparably greater. I am conſcious to my ſelf that what I have attempted is far below the Dignity of the Matter: But I ſhall never repent my Labour, if Your Majeſty vouchſafe to caſt a Gracious Eye upon it, merely as an Inſtance of my unſhaken Loyalty, in Order to Your Service, and the Benefit of Your People; and to accept it, as an Homage, and Offering of my Zeal, and Duty, and an unfeigned Teſtimony, That I am

Your MAJESTIE'S

Most Humble,

Most Obedient, and

Most Devoted Subject,

N. JOHNSTON.

Newyears-day, 168$\frac{8}{9}$.

THE

Introduction.

WHEN *a Fire happens in any conſiderable Building (much more in a magnificent* Pallace*) every one runs with his Bucket, works at the Engine, helps to rear the Ladders, or do ſomething to ſtay the Ravage of the Flames; and when the devouring Element hath reduced all to Cinder, and Embers, then hath he leiſure to conſider the Proximate Cauſes of it, the unhappy Accidents that produced it, and the ways and means whereby ſo waſting a Deſtruction might have been prevented. After which, he ſurveys in his Melancholy Thoughts, the former curious Arrchitecture, the rare contrivance, largeneſs, and beauty of the Rooms, and Statelineſs of the whole* Pile. *And after ſome time, allowed to his affrightment and aſtoniſhment, begins to forecaſt, how a more durable Structure may be raiſed again, of leſs combuſtible, or periſhable Materials. He thinks then of facing it with* Jaſper *Cruſting, and flooring of it with Marble, and ſo ſecuring it, that nothing but the laſt deflagration ſhall diſſolve it.*

So thoſe of his Majeſties Subjects, who lived before the Calamitous Fire was kindled in his Bleſſed Father's Dominions, could not without a moſt anxious Concern, reflect on the antient Glory of that ſo well-diſpoſed, and beautiful Monarchy, brought to that ſad Cataſtrophe, by thoſe who at firſt, may be preſumed, deſigned no ſuch Miſchief: but by proſperous ſucceſs, and fatal Intervening Accidents, devolved the Power into ſuch Hands, as by an implacable Malice, and incredible Barbarity were not ſatiated even with the ſacred Blood of the Bleſſed Martyr.

Thoſe erected a moſt Tyrannical Commonwealth, and Oligarchy (Governments unknown to theſe Iſles, ſince the Roman *Conqueſt) and with inexpreſſible Cruelty, and Devaſtation, for many Years exhauſted the Blood and Treaſure of the Subjects.*

But when they had filled the meaſure of their Wickedneſs, and the Uſurped Power rolled from one Hand to another, The miraculous Reſtauration of His late Majeſty, reſeated the Monarchy again, and ſetled us in a moſt profound Peace, while all the neighbouring Countries were haraſſed with cruel Hoſtilities, and moſt Bloody Wars.

However though that great Prince, by the Bleſſing of God, laid the Foundation of a Glorious Temple of Concord, Peace, and Eternity of Empire; yet for ſome Years before his Death, we ſaw a ſtrange Propenſity, in Male-contents, tumultuous Petitioners, Aſſociators, and daring Promotors of the Bill of Secluſion, to involve the Kingdom again in a Civil War.

The INTRODUCTION.

Having a natural Inclination, rather to imploy the time I had to ſpare from the diligent Attendance upon my Profeſſion, in the Study of Antiquities, than in other Divertiſements; It was, during theſe later Revolutions, that I did more immediately employ ſome of my vacant Hours in reviſing not only my former Collections, out of our own, and other choice Hiſtorians, but in peruſing ſome of the Works of our ableſt Maſters in the Laws, for the eſtabliſhing my own Judgment, and digeſted ſomething ſuitable to the then State of Affairs.

Which while I was eſſaying, ſome Perſons of Honour (to whom I muſt ever pay a ready Obedience) ſuggeſted to me, that ſome Treatiſe diſcovering the Excellency of the Engliſh *Monarchy, would be uſefull to the Publique.*

This to me was a ſufficient Command, and from thenceforward, I began to Plot out ſomething towards it. Which from a deſign of ſome few Sheets (by the large extent of the Subject) hath ſwelled to this Volume; which the conſiderate will eaſily judg I could not well comprize in a leſs Bulk, ſince almoſt every Chapter contains what might have required a ſingle Treatiſe.

There being alſo ſcarce one particular Branch of the Conſtitution of the Monarchy, the black Parliament did not alter; I have been obliged under all thoſe Heads to examine their Principles, detect their Frauds, ſiniſter deſigns, and the miſchievous Conſequences of thoſe alterations or ſubverſions they made, and have treated ſo much the largelier of thoſe Peſts of all Governments, Faction, Sedition, and Rebellion, as I conceived the quiet repoſe, and tranquillity of the Government required it.

Yet I flatter my ſelf, that all concerned therein, will take my advice, reaſoning and collections in good part: Since I have no other deſign, but to prevent their Perſonal Ruin, and the Calamities that have been ſo waſtingly brought upon theſe Kingdoms by them; and may be brought again, if ever the like ſhould be attempted.

For the effectual prevention of which, I am in hopes, that the right underſtanding the Conſtitution of the Government, will be an uſeful Antidote, and would wiſh all Male-contents to conſider (what the conſulting of Hiſtory, and their own Experience may teach them) that however the Engliſh Monarchy for a time, by Faction, Sedition, or Rebellion, may be weakned, or Eclipſed; yet the juſt Monarchy, like the Sun, ever diſſipates all the Miſts, hazy Weather, and Clouds; and will at laſt (though ſometimes not without Thunder and Lightning) clear the Air, and ſhine with more Powerfullneſs, and Splendor than before.

The rude ſhocks of popular Diſturbance, do but more ſecurely eſtabliſh the Throne. It being the Prudence of every Governour to make more defenſible that part of the Fortreſs, which by any Aſſault, hath been found moſt weak, and untenable.

As I have endeavoured on the one hand to keep the Subjects in their Duty, and by all Dehortments, reclaim them from Sedition and Rebellion, and have laid open the ancient State of the Government, and the abſoluteneſs of our Princes, for ſome Ages after the Conqueſt: nevertheleſs I would not be underſtood to intend the reducing the

Subject

Subject to their Priſtine Bondage. This is far from my Thoughts.

What I have done in this kind, is not only becauſe the ſubject matter required the deſcribing the ancient Model of the Government, and that of late the Power of our Monarchs hath been endeavoured to be too much reſtrained, but principally upon three Accounts.

Firſt, to diſcover the gradual Relaxations of the abſoluteneſs of our Princes, for the greater eaſe of the Subjects. Secondly, to let all know that our Liberties, Priviledges, and Immunities, have proceeded from the Grants, Benevolences, and Gracious Condeſcenſions of our Kings. Thirdly, to induce the Subjects with due thankfullneſs to acknowledg the bountiful Favour of our Soveraigns, and the Wiſdom of our Anceſtors, in ſolliciting for, and obtaining ſuch Liberties as we enjoy, beyond the degree of any Subjects, either to Crowned Heads, or Republicks. There being ſuch Barriers ſet in England, *betwixt the Soveraign, and his Subjects, as neither can remove without fatal Inconvenience.*

For as the Princes greateſt Eaſe, Proſperity, and Glory, is when he Reigns, not ſo much over the bodies, as in the hearts of his Subjects, and rules by the Laws: So the Peoples Profit, Plenty and Tranquillity, is the moſt certain and eſtabliſhed, when they are content with the Enfranchiſements the Laws allow, and endeavour not to invade the Prerogatives of the Crown; as the Houſes of Parliament, convened 1641. *did by their dethroning Propoſitions and Bills: which if they had been granted, would not only have unſoveraigned the King, but rendred the condition of the Subject more miſerable and enſlaved, than it had been for many centuries of years by-paſt.*

Οὔτε γὰρ πᾶσιν ἁπλῶς Μοναρχίαν εὐδαίμονα Βασιλείαν ῥητέον, ἀλλὰ μόνην τὴν ἐξ ἑκόντων συγχωρεμένην, καὶ τῇ γνώμῃ τὸ πλεῖον ἢ φόβῳ καὶ βίᾳ συγκυβερνωμένην. ὧν δὲ μὲν πᾶσαν Ὀλιγαρχίαν, Ἀριστοκρατίαν νομιστέον· ἀλλὰ ταύτην ἢ τὴς ἂν καθ' ἐκλογὴν ὑπὸ τῶν δικαιοτάτων καὶ φρονιμωτάτων Ἀνδρῶν βραβευήται· ὧδε γὰρ πλησίως ἂν δημοκρατίαν εἶ ἢ πᾶν πλῆθος κύριόν ὅτι ποιεῖν ὅ, τι ποθ' ἂν αὐτῷ βληθῇ καὶ πρόθηται, ὧδε δ' ὧ πάτριόν ὅτι καὶ συνηθὲς θεοὺς σέβεσθαι, γονεῖς θεραπεύειν, πρεσβυτέρους αἰδεῖσθαι, νόμοις πείθεσθαι, ἀλλὰ ὧδε τοῖς τοιούτοις συνήμασιν ὅταν τὸ τοῖς πλείοσι δόξαν νικᾷ, ἔτο δὰ καλεῖν Δημοκρατίαν. 6. Hiſt. p. 452. C.

I have endeavoured in the whole work, to diſcover how much the Engliſh *Monarchy excells other ancient and modern Governments, and even the* Utopia *and Fictitious Ideas of the Philoſophers. The judicious* Polybius *hath a memorable obſervation, That every Monarchy is not to be called a Kingdom; but that only, which is yielded to by the willing, [that is, which is freely ſubmitted to, to diſtinguiſh it from Tyranny] and which is governed by Counſel, rather than by fear or force. Alſo that every Government of few, is not to be called the Principality of the Optimacy: but that wherein the Juſt and Prudent by Election have the Power. That, he ſaith further, is not to be called the Empire of the People, where every multitude hath Power of doing what they will or purpoſe; but where the Countries Cuſtomes flouriſh, where the Gods are worſhipped, Parents honoured, the Elder Perſons reverenced, and the Laws obeyed.*

All which I hope I have made apparent, are better provided for in our Hereditary Monarchy, than in any other known Government, eſpecially as to the Peoples benefit in the rare Conſtitution of the Legiſlative, and yet the Soveraign hath retained ſufficient Power to ſecure the Peace of his Countries, and be able to bear the Port of a great and juſt Monarch.

In this Treatiſe I meddle not with the Arcana Imperii, *they have too much of Majeſty impreſſed upon them, to be deſcribed by ſuch Pencils*

Pencils as I can use; *and like the Kings Coin, are incircled with a* Decus & Tutamen, *may neither be clipped, nor adulterated.*

Neither have I medled with the Religious part of the Government, that not being my Province. *I write abstractedly of the Soveraign, and the Constitution, without regard to the Religion of the Prince: as being well satisfied, that whatever Qualifications the Subjects may wish for in their* Prince; *yet Religion* qua *Religion, should neither influence the Succession, nor their Obedience.*

In so great an undertaking, I hope it will be considered, that as in a great Building, all the Rooms are not alike richly furnished, There are some Utensils fit for the Kitchin, which are not for the Dining Room: Some Pictures suit the Hall, others the Stair-case: Such as are for Chimney-pieces, are not agreeable to the Great Chamber: The choicest are fit for the withdrawing Room, and the enriched Closets.

So in this work I am obliged to keep a decorum. *In some places I have reason to use a more close and contracted, in others a more free and loose way of Arguing. Sometimes I am forced to use the significant, though obsolete, Saxon, or the crabbed Terms of Law, and Arts, and intermix the less refined Sentences of old Authors, according as the subject matter required; so that I could no waies use that politeness of phrase, or roundness of Periods the curious may expect.*

I presume not, that every one will be equally delighted with the researches I have made into the usages of remote Ages: or with the Censures upon some mens later Actions. But most, I hope, will find good use of either; and when they consider I have endeavored to follow great Authors, and have faithfully quoted them, they will more readily acquit me.

Therefore I beg that the Ingenious Peruser will not pass his Censure upon parcels; but after he hath perused the whole, will be so charitable to believe, that those Parts, which are less acceptable to him, may be grateful to others; and will allow, that in so great a work (wherein much variety of Reading and Argument was requisite) I cannot expect to adapt things to the Genius of every one.

Yet as far as I am able, even in this particular, I have endeavoured it; by interspersing in every Chapter, either Historical Remarques, or the weighty Sentences of Grave Authors: and though I lose some of the Elegancy and Emphasis, in rendring them into English; *yet I hope the Reader will have recourse to the Margent, where he will find I have not wittingly falsified any Quotation.*

Non vero nudas & sparsas sententias dedimus, ne diffluerent, & esset quod dicitur Arena sine Calce; sed eas inter se haud indecenter vinximus, & interdum velut cemento quodam commisimus nostrorum verborum. Ut Phryg ones e varii coloris filo unum aliquod Aulæum formant, sic nos e mille aliquot particulis uniforme hoc & cohærens corpus. *Lipsii Polit. de Concilio & Forma Operis.*

What Apologie Lipsius *makes for himself, I must crave the benefit of; That though I have culled out from Learned Authors great variety of Sentences, yet I have not so scatteringly strowed them, that they might seem Sand without Lime; but have with such Cement as I could, not undecently inlaid them. And as the workers of Hangings, from threads of divers colours weave one piece of Tapistry: So from a thousand Arguments, and materials I have fashioned the uniform and connected discourse of the* English *Monarchy:*

which

which though in ſingle branches, hath with great Judgment and Arts been compoſed by others; yet, that I know of, hath not been ſo digeſted in one body before.

This conſideration leads me to another neceſſary Apology for my ſelf; that whereas (by an heedleſneſs I dare not excuſe) I had not in my firſt draught, noted the Pages in ſome Modern Authors, nor the Authors themſelves, yet have tranſcribed their whole Sentences. I deſire the candid Authors, and Reader, not to Interpret this a ſtudied Plagiariſm; but rather impute it to the good Opinion I had, of the vivacity and ſignificancy of their expreſſions, which made me inſert them, and no deſign to vend ſtollen Wares undiſcovered; for it will be eaſily found, that I challenge them not as my own: and if the attentive collate ſuch places, he will find, that what ever rich Gemms or Metals I have borrowed, I have endeavoured to place them with advantage: and though I cannot ſay, I have enriched them in the ſetting; yet have moſtly uſed ſome workmanſhip about them, or have added ſome ancient Authority parallel to them.

This having been the product of many ſpare Hours, and my Profeſſion (which no other ſtudies have ever interfered with) having often obliged me, to leave the matter abruptly, in the middle of a Paragraph; whereby I returned not again to it, with the ſame warmth and train of thoughts; and the ſending up my Copy in parcels, at diſtant times, to the Preſs, I hope will prevail with the conſiderate to pardon what inconnexion, broken ends, or ſome ſmall repetition may be found in it.

I muſt here alſo advertiſe the Reader that the whole Original was writ, and the moſt part Printed, before the laſt Seſſion of Parliament Nov. *the* 9th. *So that what hath fallen out ſince, he can expect no touches upon: and though at preſent the Harmony be not the ſame that was formerly betwixt the King and his two Houſes; yet it is to be hoped that, betwixt ſo Wiſe and Gracious a King, and ſo Loyal a Parliament, there can be no long diſcord, eſpecially when it is conſidered who will have the greateſt advantage by it.*

If this Treatiſe contribute any thing to it, I ſhall think my ſelf very happy. However I hope, Gentlemen and Scholars will find it a pleaſing divertiſement in their Cloſets and Studies; it being fitted for the hours of ſuch receſs, and upon every head (there being variety of matter collected, and great Volumes epitomized, and ſeveral Authors noted who treat upon that Subject) it will be a Promptuary or Common-place, out of which many, out of this Ore, upon occaſions of moment, may digeſt for their own uſe refineder notions, and having a competent ſtore of Obſervations, from Writers of good eſteem, laid before them, may with more eaſe bring them to the Teſt of their own Judgments.

Having dealt thus frankly with all, I hope, Gentlemen will allow me that plea, which moſt require, that for ſome Moles, Dimples or Scars, an otherwiſe tolerable mien is not to be contemned: and though I muſt expect the fate of all Builders, that moſt will conclude they could have contrived better; yet I hope three things: Firſt, That the well-wiſhers to Engliſh *Monarchy will have*

In magnis voluiſſe ſat eſt.

have a favourable opinion of the design, what ever they have of the performance. Secondly, That this may excite some, who have more leisure, greater helps, and more refined Judgments, to undertake this useful subject, with happier Auspices. *And lastly, That none will entertain a worse opinion of the Government by reason of my unskilful describing of it, or despise the whole, because I may (for all my Circumspection) have committed Errors in following the Sentiments of some Authors, or mistaken the true sence of any of them; which hath not been done willfully by*

N. Johnston.

THE

OF THE

EXCELLENCY

OF

Monarchical Government,

Especially of the

English Monarchy;

WHEREIN,

Is largely Treated of the several Benefits of KINGLY GOVERNMENT, and the Inconvenience of COMMON-WEALTHS, &c.

CHAP. I.

A Comparison of the Body Natural and Politic; with an account of the Subject Matter treated of.

FROM the Contemplation of our selves, in the Faculties of our Souls, and the Subservience of our Bodies, no doubt wise Men have fram'd the *Idæas* of Government; which is agreeable to what the Great and Ancient *Philosopher* (*a*) notes, That every living Creature consists of Body and Soul, whereof the one by Nature commands, and the other obeys: and in another place (*b*) he distinguisheth the manner of the Soul's Rule; in that it rules the Body by a Masterly and Absolute, and the Mind rules the Affections by a Kingly Command.

(*a*) Ζῶον πρῶτον συνέστηκεν ἐκ ψυχῆς καὶ σώματος· ὧν τὸ μὲν, Ἄρχον ὄντι φύσει· τόδε, ἀρχόμενον. Arist. *Polit. lib.* 1. *c.* 5.

(*b*) Ψυχὴ τοῦ σώματος ἄρχει δεσποτικὴν Ἀρχήν· ὁ δὲ νοῦς τῆς ὀρέξεως πολιτικὴν καὶ Βασιλικήν. *Ib.*

Comparison of the natural with the Politic body.

As the Natural Body consists of Head and Members, made stable and erect by the Bones, tyed together and curiously interwoven by the Nerves, Ligaments, Tendons, Muscles, and Membranes; pervaded by the nutritious juice, *Lympha* and Blood; irradiated by Natural, Vital, and Animal spirits; animated and enlivened in all its motions by the Energy of a Rational Soul: So in the Political, the Sovereign the Head, and the People the Members, are held together by the strong Sinews and Nerves of good Laws and Political Constitutions; actuated and enlivened in all their motions by

the influence of the Prince and his Government (as the Soul, *Archæus* and Cœlestial fire) whereby every Member performs its Offices in this great Oeconomy, the whole System is kept in regular and orderly Motion, is firmly established, and enabled to exert all those beneficial Powers that are admired in a well composed Body Politic. The Body without the Head, being but a Trunk and inanimate Carcase; and the Head without the Body, as a curious piece of Clock-work without Motion.

It must be owned to be a noble Enterprise to make researches into the constituent Parts, Harmony and Composure of Government, which is that benign Supreme Power which influenceth vast Societies of men, and combines all tempers, constitutions and interests in one noble Machine, for the benefit of the whole and every part; and makes every Dominion a little World; wherein Beauty, Order, and the Blessings of this Life are inspired into all the Members, how minute soever, with that calmness (when no disturbances are given it) that we scarce hear the motions of the (*c*) Machine, or see the Springs that move it.

(c) *Sic orbem Reipublicæ esse conversum, ut vix sonitum audire, vix impressam orbitam videre possumus.* Cic. *ad* Attic. Ep. 36.

But as in the Body Natural the (*) *Philosopher* observes, That by the turbulence of depraved Appetites, by heady Rashness, and seducing Passions in the vitious and ill-affected, the Body seems to command the Soul, and Reason is dethron'd: So in the Commonweal, when from mistakes and misguided Zeal, Discontent, Ambition, and other vitious Inclinations, People are infected, whereby the Malignant Fever of Sedition, or the Pest of Rebellion rageth in a State; the Sovereign is, for a time, kept from the Exercise of his Royal Power, and sometimes dethron'd.

(*) τῶν γὰρ μοχθηρῶν καὶ μοχθηρῶς ἐχόντων, δόξειεν ἂν ἄρχειν πολλάκις τὸ σῶμα τῆς ψυχῆς.

The Scheme of the whole work.

But to leave this pleasing Allegory, which I could pursue in comparing all the Members of the Body, and Faculties of the Soul with the constituent Parts and Offices of *Government*: I shall, instead of that, draw a short Scheme of my design in this Work, which I had never undertaken, if it had not been that I was invited to it by a Great and Wise Minister of State, whose glorious Service to his Prince and Country will be celebrated in remotest Ages: and having liv'd to make some Observations on the Causes and Managery of the Rebellion against King *Charles* the Martyr, and the tendency to another Civil War of later date; and revolving with my self, that though many wise and judicious Persons both know, and have learnedly writ, of the secret Springs and Movements of them, infinitely beyond what I can pretend to: and that both our own Country-men have, in Parts, writ of all the branches of the *English* Government, and many Foreigners of Politics in general, or such as were fitted for the Governments under which they lived; yet having met with none that had so particularly writ of the Excellency of the *English* Monarchy, as to illustrate it so as it might be useful to the preventing Seditions and Rebellions, and to clear the Commodiousness and Necessity of submitting to it; and placing a great Portion of our happiness here in living under it, I conceived it might be a profitable Essay to excite those, who have not leisure and opportunity to peruse great and numerous Volumes, to

My Lord President.

extract,

extract, for their use, such things as had occurred in my poor Reading, to induce them to prize it as they ought, and to furnish them with such Arguments, as my low Reasoning was able, whereby to answer the Objections of our late Republicans against it, and discover their Methods of Proceedings towards the overthrowing it, and to caution all the well-meaning Subjects against all the Arts of Factious and Seditious People and Principles.

And though I cannot promise my self the success I wish; yet I hope I may excite some more knowing, learned and judicious, to furnish our little World with a more Copious and Elaborate Piece, which may supply my defects, and more abundantly satisfy the ingenious and curious Reader, to whom I shall now draw the Curtain, and expose the Model of the designed Work.

First, Therefore, (*d*) as a Foundation, I shall treat of the neces- (*d*) cap. 2.
sity of Government in General; In which Chapter I shall discourse of its Original in Families, *&c.* (*e*) Then that the People are not the (*e*) cap. 3.
original of Government. Then (*f*) of the benefit of Government in (*f*) cap. 4.
instituting Laws; In (*g*) securing Property and other particulars. (*g*) cap. 5.
From this I proceed to treat of the (*h*) inconvenience of *Democracy*, (*h*) cap. 6.
and of the several (*i*) Forms of Common Wealth Governments, (*i*) cap. 7.
before, and in, *Aristotle*'s time. After which (*k*) of the inconveni- (*k*) cap. 8.
ence of all kinds of Republick Governments Then of the preference
(*l*) of Monarchical Government before all others. In all which (*l*) cap. 9.
Chapters I touch upon the Principles and Practices of our late Republicans, which having dispatched, I give the Character of a good
(*m*) King in general. Then that the care (*n*) of Religion is incum- (*m*) cap. 10.
bent upon Kings. Then of the (*o*) Clemency, Prudence, (*p*) Courage (*n*) cap. 11.
(*q*) and Military Conduct of Kings; of the (*r*) burden and care of (*o*) cap. 12.
Kings. (*s*) The Excellency of Hereditary Monarchy. Then I proceed (*p*) cap. 13.
to the King's Authority and (*t*) Sovereignty in general; and more (*q*) cap. 14.
(*u*) particularly according to our Laws by the Enumeration of (*r*) cap. 15.
many particulars. (*w*) Then, as a Corollary, that the Sovereign is not (*s*) cap. 16.
accountable to any upon Earth. That the King is not to be (*x*) Re- (*t*) cap. 17.
sisted or Rebelled against. In what cases he may (*y*) dispence (*u*) cap. 18.
with the Execution of the Laws of his Country. Then I treat of the (*w*) cap. 19.
King's Authority (*z*) in making Laws, and of the Laws of the *Romans* (*x*) cap. 20.
in *Britain*, and of the *British* and *German* Polity. Next of the (*y*) cap. 21.
Saxons (*a*) great Councils, of whom they consisted, and how the (*z*) cap. 22.
Laws were established by the respective Kings. Then of the great (*a*) cap. 23.
(*b*) Councils from the Conquest to the beginning of *Hen.* 3. Then (*b*) cap. 24.
of the great Councils (*c*) and Parliaments during the Reign of (*c*) cap. 25.
Hen. 3. to the end of *Edw.* 3. After which of the Parliaments (*d*) (*d*) cap. 26.
of *England* during the Reign of *Edw.* 2. to the 22. of King *Charles*
the 2d. Then of Modern (*e*) rightly constituted Parliaments, and (*e*) cap. 27.
of the Factious (*f*) Members of Parliaments; wherein I discourse, (*f*) cap. 28.
at large of the Encroachments of some Parliaments, especially of
some Houses of Commons. Then from the great Council I pass to
the (*g*) Right Honourable the Privy Council, their Qualifications, (*g*) cap. 29.
to be at the King's sole appointing. Of Ministers (*h*) of State, *&c.* (*h*) cap. 30.
Then of the King's Sovereignty in appointing (*i*) Magistrates, (*i*) cap. 31.

(k) cap. 32. (l) cap. 33. (m) cap. 34. (n) cap. 35.

(k) Judges, Justices (l) of Peace and their Sessions; Of the Kings Soveraignty in making (m) War and Peace. Concerning (n) raising Money upon the Subject, and obligation of Subjects to supply the Soveraign.

Having thus dispatched the particulars, that more immediately relate to the Soveraign, I come to the Subjects, and first discourse (o) of the Nobility; Then of the (p) Gentry, and the (q) Commonalty. Then of the disposition (r) of the Common People: Next of the Subjects obedience. (s) Which last leads me naturally to discourse of the contrary, *viz.* (t) Faction and Sedition, and the causers and causes of them under Ten several heads. Then of the signs (u) of them: Then of the (w) Prognosticks of Faction and Sedition; After which I pass to the Remedies (x) of Faction and Sedition. Then of the Preservatives (y) against Sedition and Faction; and Lastly, of Conspiracies (z) and Rebellions.

(o) cap. 36. (p) cap. 37. (q) cap. 38. (r) cap. 39. (s) cap. 40. (t) cap. 41. (u) cap. 42. (w) cap. 43. (x) cap. 44. (y) cap. 45. (z) cap. 46.

The Authors Apology for himself.

In all which I have endeavoured to divert the Reader with variety of History, and Quotations out of such most approved Authors as I judged most suitable to my Design, and would be most grateful to the Reader; whom I desire, according to my poor Talent, to please as well as instruct; and have chosen rather to give him the Authorities I use in their own Language, and thereby be just to the Authors, than to follow the way of many Writers in this Age, who though they take the Notions and Hints from such as have writ before them, yet by varying Expressions and new-wording things more Modishly, their Writings pass for Originals.

Because I design this Work principally for the Nobility and Gentry, as well as the Learned of all Ranks, I have judged it a duty incumbent upon me to give them the *Greek* and *Latin* Quotations, whereby they may be excited to peruse such Authors as have been valued in all Ages; and lest some might complain of the interruption by them of the continued discourse, I have mostly placed them in the Margent, upon which they may cast their Eye, only when they please. And though the whole may look more like a piece of *Mosaic* Work, than a beautiful Picture to be viewed *uno intuitu*; yet I hope the Ingenious Reader will find, that as I have bestowed some pains in disposing and placing the Gems and Stones; so he will find, in the perusal, some lively Figures and Images, which will bear proportion to the great *Leviathan* of Government, I design to represent; and though I cannot pretend to heighten and enrich all things with floridness of Language, yet he will find something to commend it, as a Country piece, where it received its first and last hand.

Mr. *Hobs* having adorned the Frontispiece of his *Leviathan* with the figure of a Giant's Head, on all parts of which are swarms of all Orders, Offices, and Imployments of mankind, that are combin'd in Government, delineated as the *Picts* are supposed to have painted their Bodies, or *Trajan's* Column is engraven.

A Parallel betwixt the Humane Body and Government.

So I think it not improper to give a rude draught of the Comparison betwixt the Parts and Offices of Humane Bodies and of the great

great *Coloſſus* of Government—— *Sic parvis componere magna*——

The common People I may not unfitly with their Tillage and Labor, call the common Digeſtor, like the Stomach that affords nouriſhment to this great *Behemoth*; the (*a*) Philoſopher telling us that the Husbandman's toyl is for nouriſhment. The Mechanical Traders are the Bowels and lacteal Veſſels, which tranſmit the nouriſhment in the inferiour Belly. The Merchants are the *Vena Porta*. The lower Magiſtrates and Corporate Towns may be reſembled to the *Glandules* and the *Viſcera*, that promote the ſecretion and diſtribution of the nutritive Juices.

(a) ἔστι τὸ περὶ τὴν τροφὴν πλῆθος οἱ καλούμενοι γεωργοί. *lib.* 2. Polit. c. 2.

The Gentry and Yeomanry are the Muſcles, Ligaments, and Membranes which make up the fleſhy and robuſt Parts. The wealthy are the fat and plumpy Parts. The Learned part of Mankind may be judged the Organs of Senſe; The Military the Hands and Feet; The ſolid and judicious the Bones that give ſtability and erectneſs.

The Biſhops and Judges bear ſome parallel to the Heart and Liver, by whoſe functions the Religion and Laws are brought to refinedneſs and a racy Spirit. The Preachers and Pleading Lawyers have ſome Analogy to the Lungs and Midriff, which if untainted contribute much to the ſpiritualizing of the blood.

The Nobility are the Vital Spirits, who, by a liberal Education, give a generous mien to the whole.

The Counſellors of State may well be compared to the Brain, from whoſe Spirits the progreſſive and regular Motions are directed.

The Laws Spiritual and Temporal, by ſome are compared to the Nerves and Sinews, that bind and faſten together all the Contexture: or may be reſembled to the Blood which permeates the whole maſs and keeps every part from putrefaction. *Leges a ligando.*

The Soverein is that *Forma Informans*, that *divinæ particula auræ*, The Philoſophers ἐντελέχεια, the forming Soul, the Portion of Divine Spirit and Ubiquitary power that preſides and governs all.

CHAP. II.

Of the neceſſity of Government in general, in Families firſt, and after in Societies.

HAving repreſented Government by the energy of the Soul in the combination with the Body in individuals: The next *Idea* of it is illuſtrated in Families. Therefore the Philoſopher ſaith, (*a*) There is a neceſſity to conjoyn thoſe, whereof one cannot be without the other, as Male and Female, for the cauſe of Procreation. To which according to *Heſiod* (*b*) he adds a ſervant: but ſuppoſing in the firſt beginning there were no men ſervants born, he makes

The firſt Society of Man and Wife.

(a) οἷον θῆλυ καὶ ἄρρεν τῆς γενέσεως ἕνεκεν. 1 Polit. c. 1.

(*b*) οἶκον μὲν πρώτιστα, γυναῖκά τε, βοῦν τ' ἀροτῆρα. *Sit Domus imprimis, Uxor & Taurus arator.*

makes that anOx,as being the uſefulleſt for all the imployments this firſt joyned couple had uſe of in Tilling the ground, and I doubt not but under that name he includes either all the Creatures ſerviceable to man, or all that Species, as Bull, Cow, Calf and Ox.

(a) τεῖα μέρη τῆς οἰκονομικῆς ἦν· ἓν μὲν δεσποτικὴ, ἓν δὲ πατρικὴ, τρίτον δὲ γαμική. Idem c.8. The ſecond Society of a Family.

Therefore the ſame great Philoſopher(*a*)makes it his firſt conſideration of Government to diſcourſe of the three conſtituent parts of a Family; The firſt Deſpotic of a Maſter over his Servants; the ſecond Paternal,of a Father over his Children, and the third Nuptial, which is the Authority of the Husband over the Wife; and from hence we may judge that *Polybius* conſidered his τειχμέρη about which a late Author gives a large account.

(b) πᾶσα γὰρ οἰκία βασιλεύεται ὑπὸ τοῦ πρεσβυτάτου. Pol. l. 1. c. 1. The Fathers Government.

Now the Maſter of the Family,according to (*b*) *Ariſtotle*,in ſeveral places of his Politics was as King; as expreſly in one place he ſaith, Every houſe is governed by Kingly command, by him that is eminenteſt in Age. In which ſhort ſentence we may note, that this muſt relate to an Infancy in the World before Families were embodied, and ſeems to overthrow the opinion of its Eternity aſcribed to the Philoſopher, and however is a plain illuſtration of the Riſe and Original of Kingly Government from that of the Paternal.

(c) Ἀλλὰ γυναικὸς μὲν πολιτικῶς, τέκνων δὲ βασιλικῶς. P. *lib.* 1. *c.* 8.

In this Family the ſame Philoſopher (*c*) diſtinguiſheth the Husband's rule. That over the Wife is civilly, that over the Children Kingly; both which words are uſed for a milder ſort of Government, than that which was maſterly over Servants.So that it is not to give Parents the Power of *Saturn* to devour their Children; nor was

(d) French Monarchy, p. 68.

there need for a late Author (*d*) to bewail the ſtate of Children under ſuch a Tyranny (as he accounts it) of Parents. For I ſhall hereafter I hope make it appear that Kingly Government is of all other the leaſt Arbitrary (as exerciſed eſpecially in *England*) and that Kings are juſtly ſtiled *Patres Patriæ*, Fathers of their Countries, and that it is Kingly as well as Fatherly, to govern without aſperity and bitterneſs, by benevolence and Paternal care, which never was known in Republican Patriots. However all I will infer at preſent from hence is, that Government is coeval with Families, and ſhall ſpeak more of it in the Chapter of Monarchy.

Society of Families.

From theſe private *Lares* and Oeconomies ſprung up Societies. For man being of all the Creation only endowed with Speech, and that furniſhing him with diſcourſe upon things troubleſome and pleaſant, profitable and unprofitable, juſt and unjuſt; For (*e*) that before all other Creatures, ſaith the Philoſopher, it is the Property of man that he alone hath the ſence of Good and Evil, Juſt and Unjuſt; from thence it muſt follow not only that man is a ſociable Creature, or fitted for Political Government, but that Society is founded in Nature.

(e) τοῖς ἀνθρώποις ἴδιον τὸ μόνον ἀγαθοῦ καὶ κακοῦ, καὶ δικαίου καὶ ἀδίκου, καὶ τῶν ἄλλων αἰσθησιν ἔχειν. Polit. lib. 1. c. 2. πολιτικὸν φύσει ἄνθρωπος ζῶον. ib.

State of *France* p.1.

For the Tongue cannot be imploy'd reaſonably but in Company; none but one crazed in his Senſe, will hold Parly with himſelf,or talk to himſelf the thoughts of his heart; Nature that gave man a Tongue, gave him alſo Inclination to Society, where he might uſe it, as a late Author out of *Ariſtotle* words it.

Why Man is Sociable.

The ſame is demonſtrated by the Moral Virtues, which are proper

per and peculiar to mankind. How and to whom ſhall Juſtice be adminiſt'red but amongſt men? How ſhall Fortitude appear but upon ſuch occaſions as appear amongſt men? Where ſhall Prudence have place unleſs in debating and reſolving the affairs of men? Who can be liberal if he gives not to many? Who ſhall enjoy the ſweets of Friendſhip, if he have not to whom he may be a Friend, with whom to ſhare his happineſs. Nature therefore that hath made Virtue proper to man, hath alſo made it proper to man to live in Company.

People the Subject of Government.

Theſe *præcognita* being granted, it will be eaſy to evince, that no Society can be happy without Government; the body of the People being the Subject matter of it; of which the Philoſopher (*a*) reckons ſeveral kinds, as Fiſhers at *Tarentum* and *Byzantium*, Mariners at *Athens*, Merchants at *Ægina* and *Chios*, Skippers at the Iſland *Tenedos*, and in all places are Husbandmen, Artificers, Soldiers, and Nobles; ſo that Government is moſt neceſſary to combine theſe into Societies for mutual ſafety and profit. Therefore the ſame (*b*) Philoſoper obſerves that to obey and command (which are the Characteriſtics of Government) are not only to be numbered among the profitable but the neceſſary; For as ſoon as we are born we fall under that diſcrimination.

(*a*) Polit. lib. 4. c. 4. lib. 7. c. 4. lib. 6. c. 1.

(*b*) Ἄρχον δὲ φύσει καὶ ἀρχόμενον διὰ τὴν σωτηρίαν. Polit. lib. 1. cap. 1, & 3.

The neceſſity of Government.

The great (*c*) Orator aſſures us that without Government, neither Houſe, City or Nation, nor the Complex of Mankind or Nature, nor the World it ſelf could ſubſiſt.

So the divine *Plato* (*d*) tells us that it is a Law eſtabliſhed by Nature, that the Inferior ſhould yield to the Superior in Eminence, and that Law would be inverted if we did not yield to them, and live according to the direction of our Governors.

(c) *Sine imperio nec domus ulla, nec civitas, nec gens, nec hominum univerſum genus ſtare, nec rerum natura omnis, nec ipſe mundus potuit.* Lib. 3. *de Ll. initio.*

(d) *Tom.* 2. *p.* 391.

So the *Aborigines* in (*e*) *Salluſt* are thoſe only which are reputed a wild ſort of men without Laws and Government; and *Tacitus* (*f*) ſpeaking of the Babarous *Parthians*, calls them looſe und unſetled, rather without a Lord than in Liberty: and there may be good reaſon for it; ſince, as *Juſtin* (*g*) notes, they ſprung from the People baniſhed from the *Scythians*, and ſo we may ſuppoſe them none of the moſt civilized among them.

(e) *Genus hominum agreſte ſine legibus ſine imperio.*

(f) *Incerti nimium ſolutiq; magis ſine Domino quam in libertate.*

(g) *Ab exulibus Scytharum Parthorum Imperium fuiſſe deductum. lib.* 22.

The Evil of Liberty.

Uncontrouled Liberty may ſeem ſweet and be affected by a ſett of People led by Appetite only, and upon the firſt notion: but when the Wiſe and Sober reflect upon the inconveniences of it (where lawleſs and unlimitted) there inevitably will appear a neceſſity of Government and Laws, to reſcind the Luxurioufneſs of our depraved deſires, without which we ſhould all run into Spruns and Ramel-wood, and the Capreoli, Suckers, Wins, and Brambles would choak up the richeſt Soil; yea the rude diſpoſitions of men without the force of Government, would no more be broken than thoſe of untamed Beaſts.

Neque fera hominum pectora frageſcunt, donec vim ſenſerint imperii.

Mr. *Hobs* (*h*) hath introduced, in the condition of Nature, an imaginary State of War, whereby every man, in his pure Naturals, had right to every thing his brawny Arm, or daring Soul could gripe, covet, or affright his fellows from poſſeſſing; and aſcribes to his *Aborigines* ſuch a baſeneſs and villany in their Nature, as degrades them to that Beſtiality rarely found amongſt Savages. Allowing them

(h) *Leviathan.*

The ſtate of Nature, not a ſtate of War.

them ſcarce Reaſon, or ſuch an one as was wholly ſubordinate to their Appetites; as if he had taken his obſervation from the Swine-Trough, where he had ſeen the maſter Boar paſs from Trough to Trough, to drive the weaker from their feeding, till he had been ſatisfied. (*a*) All which (ſaith a moſt Judicious Nobleman) he doth for no other end but that he might fit man for thoſe Chains and Fetters he hath provided for him; depriving him of the greateſt glory and happineſs that can be attributed to him of Gentleneſs and Benevolence, which is conſpicuous in man's Nature; and on the contrary making him the only Creature, that out of the malignity of his own Nature, and the baſe fear he makes inſeparable from it, ſhould be obliged, for his own benefit, and the defence of his Rapine, to worry and deſtroy all of his own kind, till they all became yoaked by Covenant of his own contriving, never yet entered into by any one man, or in Nature poſſible to be entred into; as in due place I ſhall make appear.

(a) Earl of *Clarendon's* Survey, c. 13, 14, 15.

Suppoſing however by the Law of Nature, every man may defend himſelf and annoy thoſe whom he hath power over; (*b*) yet how much more eligible is it to part with that Right, and yet to do nothing contrary to Nature, when Reaſon tells us we ſhall obtain a more excellent good, the benefit of Peace and Proſperity in Society; which together with Safety and Plenty are what Government aims at. The People finding by reaſon, that the good they wanted was not attainable without a Common Protector, to adminiſter Juſtice equally amongſt them; and the ſenſe of the miſeries that would befal them for want of this made their Routs become Societies: The *Salus populi*, in the Conſtitution of Government being the prime end of it, as moſt agreeable with the joynt Intereſt of Rulers and People.

(b) Review of obſervations. p. 20, 21. Whatever the ſtate of Nature was, yet Government is neceſſary.

The multitude therefore that do not conſider the Reaſon, that made all People commit themſelves, their lives and fortunes to the truſt of their Rulers, ought to be convinced that their giving up their Right of defending themſelves and ſubjecting them to Government, and reſtraining their own Arbitrary Wills, and yielding themſelves to the Conduct of their lawful Superiors, will conduce moſt to the obtaining of that moſt excellent good, the benefit of Peace and Society, every one being in leſs danger of miſchief from the rapacious and bloody minded, living in Society and under the Protection of the Government, than where every one might follow his own Inclinations. This alſo being the chiefeſt preſervation from that Miſery and Confuſion which Sedition and Rebellion (generally blanched with the abuſed names of *Salus populi*) have brought many Nations to.

The reaſons why all muſt quit the ſtate of Nature, to ſubmit to Government.

So the Judicious Chancellor (*c*) *Forteſcue* ſaith, that no Nation by its own Conſent was incorporated into a Kingdom, but that thereby they might, with more ſafety than before, maintain themſelves, and enjoy their goods from ſuch misfortunes and loſſes as they ſtood in fear of.

(c) *De laudibus LL. Angliæ, c.* 14. Government neceſſary for Preſervation.

Therefore the old (*d*) *Perſians* (ſaith *Sextus Empiricus*) for five days together, after the death of their King, permitted the People to

(d) *Adverſus Mathematicos lib.* 2. *Stobæi Serm.* 42.

to live Lawleſs, that after the Experience of the Slaughter, Rapine, and other Outrages committed in that ſhort interval, they might learn to hold the Government in more eſteem.

Self-preſervation and an ardent deſire of happineſs (ſaith a (w) learned Author) are the two Poles upon which all our Natural and Rational deſire and averſions move. Theſe are the Tutelars and Inſeparable Companions of Mankind through all the viciſſitudes of Life. Theſe are the potenteſt incentments to Society and Government, which not only allure but neceſſitate the Congreſs, Combination, and Cement of Confederacies in Societies, for the mutual Preſervation and Peaceable Poſſeſſion of that Happineſs all do covet.

(w) *Nalſon* Common Intereſt.

This implanted Love to our ſelves made all Mortals exerciſe their beſt faculties, to defend and enſure themſelves againſt every thing they could foreſee or fear would be capable of diſturbing their felicity, the peaceable fruition of which was the upſhot of all their deſires and appetites; which was no ways ſo likely to be effected, as by Union in Government. For to be rich and not able to defend our wealth, is to expoſe our ſelves as a prey; and to be ſafe and poor, is to be ſecurely miſerable: both which are avoided by the benefit of Government.

The Common People not to be ordered without Government.

Furthermore, if we conſider the nature of the common people which make up the groſs body, we ſhall find an abſolute neceſſity of Government. For as the Orator (x) obſerves, in the multitude is a great variety and change of opinions, they are as unconſtant as the weather, nothing being ſo familiar with them as the change of their affections; being not led by choice and wiſdom to judge of things, *ſed impetu & quadam temeritate*, without Council, Reaſon, Diſcrimination (y) or Diligence to ſearch the Cauſes, and forecaſt the Event of things, by cuſtom rather than judgment, following one anothers ſentiments, as to their ſhort-ſightedneſs ſeems moſt eligible: Their Wills and Appetites being no leſs various than their features and countenances: Their actions and deſigns turning to as divers ends, as the deſires that guide them are divers; ſo that it were impoſſible they ſhould continue long together in ſociety and peace, or enjoy the benefits deſired, if there were not ſome ſtrong tye, which, holding them united together, ſhould draw them all along to the ſame end.

(x) *Cicero pro Planc.*

(y) *Salluſt. ad Cæſarem.*

Againſt Anarchy.

When there is no (z) Government, that which is left is known by the name of Anarchy, which is deſcribed by *Bodinus*, to be where there is no Majeſty of Empire, nor power of command in Magiſtrates, or ſubordinate Officers; no form of a City, none found to command or obey: Of all Governments (continues he) Tyranny is the worſt, but of all Tyrannies, that of Many is moſt pernicious, and the impotent power of the people is the worſt; yet Anarchy is the moſt peſtiferous of all. This indeed diſſolves all into the firſt confuſed *Chaos*, where

(z) *Cum nec Imperii majeſtas ulla nec Magiſtratuum aut Curatorum eſt Imperium.* Bodinus de Repub. l. 4. c. 1. *Omnium deterrima plebis impotentiſſima poteſtas; ex his tamen omnibus nihil Anarchiæ magis peſtiferum.* Idem.

where is nothing of order but a jumble of jarring parts, every one juſtling other out of its place.

Imagine a perſon placed upon ſuch an Hill that he might ſee below him a confus'd multitude, various in their Intereſts and Appetites, let looſe to the fiery bent of their wills. He would be amazed to hear the boiſterous clamors, and ſee the ſtrange turmoils and tempeſtuous toſſings of that crowd, the deſultory actions, and all the pageantry of Garboiles, before the laſt down-right counter-ſcuffle, which the ſage wiſdom of one man (if he might be heard) would be able to compoſe.

Even ſo it is in Anarchy, or whereever the Peoples unbridled will governs; (*a*) this is a Mart wherein voices are bought and ſold, poverty and ignorance driving the crowds to null that to day, which they have eagerly purſued the day before; ſcarce forbearing the ſame day to condemn and abſolve, nothing being done amongſt them but in tumultuary ferments, and an high boyling fret, or a dead torpidneſs and irreſolution; the Ebbings and Flowings of the Ocean being more regular than theirs; whereas all Government (according to the (*b*) Philoſopher) ſubſiſts and is eſtabliſhed in firmneſs and conſtancy, by every mans knowing what is his right to enjoy, and his duty to do, or as (*c*) St. *Auguſtine* calls it, a ſociety of Men incorporated for common benefits, by the agreement of Laws.

(*a*) *Xenoph. de Rep. Athenarum. Thucyd. lib.* 3.

(*b*) *Polit. l.* 4. *c.* 4.

(*c*) *Cœtus hominum Juris conſenſu & utilitatis communione ſociatus.* De Civitate Dei, c. 23.

It is a grave ſaying of (*d*) *Tacitus*, That the common People neglect the affairs of the Common-weal, by their overbulkineſs, void of publick ſpirit and care; and in another place, That the incentives to their private profit produce a diſregarding neglect of the publick.

(*d*) *Populus negligit rempublicam, magnitudine nimia communium curarum expers.* 1. Hiſt. *Privata cuique ſtimulatio vile decus publicum.* 2. Annal.

(*e*) *Bodinus* compares a Common-wealth or Government to a Ship, and well obſerves, that without the Keel (which unites the Stern, and Fore-caſtle, Ribs, *&c.*) it would be but *informe lignum*: So a Community without Government (which unites the members of all Ages, and all Families in one body) can no ways deſerve the name of ſociety: Such a People headleſs, is not worthy to be called a Body Politick; for Government no ways conſiſts in the number of Perſons, or the heads of Citizens, but in the combination of them, under one Soveraign Power.

(*e*) *Quod omnia ætatis membra, familiaſque ſingulas in unum corpus cogit.* De Rep. lib. 1.

The unwieldy bulk of numerous Armies, wanting Conduct and Diſcipline, rarely effect any glorious enterpriſe. In the Tumults of *Naples*, the Raſcality were forced to ſet up an Head, though it were but the frothy boiſterous *Thomas Anello*. So were *Cade*, *Ket*, *Tyler*, and others in our popular Rebellions, ſet up as the Captains, Leaders, and Idols of the Clowns. From whence we may learn, that even ſuch people as roſe up (as they pretended) to ſuppreſs Magiſtrates, Monarchy or Tyranny, level Eſtates, and ſet all at liberty, yet once imbodied, were forced to chuſe Captains to lead them, to whoſe Orders there was a neceſſity of ſubmiſſion.

If

How Superiority and Government founded in Nature.

If we thoughtfully conſider, we ſhall find that Government is founded in nature, in which ſtate there is no ſuch thing as equality; for the Parent, by priority of natural cauſe, muſt be ſuperior to the Children. Yea, if we ſhould believe People to be *Juvenes ab Aquilone creati*, like Graſhoppers or Locuſts, or like *Cadmus* his men, ſprung up at once out of the Earth, underived from any pre-exiſtent Parent, all of them having equal Origin and Power; yet a ſhort converſe one with another, would have neceſſitated them to embody in Societies.

Dominion given to Man.

We Chriſtians believe God made Man after his own Image, and gave him dominion over all the Creatures of our ſublunary world; and it is not reaſonable to think, that he endowed him not with faculties neceſſary for the adminiſtration of that great Empire, not only over the Brutes, but over his own Species.

Some born to Empire.

For the Philoſopher (*f*) notes, that nature hath made ſome fit to command, and others to obey or ſerve; of which we have many and great Inſtances: So *Julius Cæſar* and others (whoſe great actions are recorded in Hiſtory) manifeſted more ſublime Spirits, than any of thoſe who were ſubdued by them; and when thoſe great Heroes were dead, though their Officers and Soldiers ſurvived (by whoſe proweſs and valour they had effected thoſe wonders) yet we read of a ſuddain degeneracy, as if the ſoul had expired, and left the carcaſs only of an Army.

(*f*) Τὰ μὲν ὅτι τὸ Ἀρχεσθαι, τὰ δ' ὅτι τὸ Ἄρχειν. 1. *Politic. c.* 5.

No Nation ſo Savage, wherein ſome Government hath not been.

The Miſchiefs of tumultuous voting, and want of Magiſtrates.

The Orator obſerves, that no Nation was ever ſo Barbarous, as to be wholly void of Religious Worſhippers, ſince every where, ſome Deity or other hath been acknowledged. Even ſo we may affirm, that never any People were ſo rude, wild, and ſavage, but they found a neceſſity of Government, of which they had at leaſt, in their firſt embodying, ſome unpolliſhed Model, and ſome ſort of Inſtitutes appointed by, and coeval with their Governours, by which their political intereſts and private concerns were regulated, without the infinite diſorder which would happen to all publick tranſactions, which ſhould be the product of tumultuous votes, where every meeting would be a jumble of great and ſmall, ſoft and hard ſculls, a pudling of buſineſs, and putting all things to chance, and blundering in a maze, till at laſt ſome Mens wiſdom formed them into order.

(*g*) *Ea demum libertas Romæ eſt, non Senatus, non Magiſtratus, non Leges, non Mores Majorum, non Inſtituta Patrum.* 1 Annal.

How then is that condition of a People to be wailed, which *Tacitus* (*g*) deſcribes to be the Roman State of liberty, wherein there was no Senate, no Magiſtrates, no Laws, no Ancient Uſage, no Inſtitutes of the Fathers.

From all which we may conclude, that the ſame nature that ordered ſocieties, gives them prudence to know that to preſerve the Society and the peace of it, it was neceſſary, that there ſhould be one or ſome, who, laying aſide private advantage and particular Intereſt, ſhould imploy their minds, bend all their thoughts, and direct their actions for the publick

good, and by the ſinews of power hold all ſo faſt united, as they ſhould guide them to the ſame end; and we muſt determine, that Government is abſolutely neceſſary for the being and well-being of a People, though there be ſervitude in it, which made *Seneca* (comparing *Auguſtus*'s times with the preceding irregular ones) ſay, The City could not have been ſafe without the benefit of ſervitude.

Salva eſſe Roma non potuit, niſi beneficio ſervitutis.

CHAP. III.

That the People are not the Original of Authority and Government.

BEfore I proceed to treat of the ſeveral forms of Government; I judge it requiſite to examine ſome poſitions made uſe of by Republicans; ſo long at leaſt, as they argue againſt Monarchical Government, or till they obtain their ends in the ſubverting of it.

One of which is, that ſupreme power is originally and fundamentally in the People, for whoſe benefit all Government was eſtabliſhed. *Secondly*, That there is a tacit reſervation of power in them, to vary the form of Government, and change the Perſons when the people finds it convenient for them. The Law of Nature, as they ſay, juſtifying any attempt to ſhake off thoſe Bonds and Fetters impoſed on them by their Superiors, or voluntarily yielded to by themſelves, if they judge that thereby their common Freedom is impeached; for that, they ſay, the People never ſubmitted to any Government, but by way of Agreement and Contract, unleſs in caſes of abſolute Conqueſt.

Therefore one (whom the Commonwealth-men eſteem their (*a*) Martyr) aſſerted, That Kings have Uſurped over the People a power inconſiſtent with their natural liberty, and that Kings owe their right to preſcription, which the greateſt Tyrant may maintain by force, and to that conſent which they may procure by violence or flattery.

(*a*) Mr. *Algernon Sydney.*

I am ſenſible, that I might more orderly have placed what I have to anſwer to theſe aſſertions, in the Chapter of Monarchy; but intending to prove that to be the beſt of all the known Governments, and that Chapter and the other preceding it, being ſo large, I judge it not ſo fit to clog it with this, but make it as a preliminary. For though I oppoſe Monarchy principally to this ſentiment; yet it hath ſomething in it alſo of uſe, to the right ſtating of the Original of Government in general.

Firſt therefore I ſhall endeavour to evince, That God Almighty was the Original Donor of the Authoritative Power of

of Government, and that not to any collective body of the People; *Secondly*, that there never was such a state of primitive freedom, or natural liberty, as is challenged; *Thirdly*, That where ever the Peoples Election was admitted in constituting a Soveraign, they capitulated not for any reservery of power of Presumption; and *Lastly*, that in the present State of our English Monarchy, no such Power ought to be challenged.

The Power was given from God to One, and not to Many; there neither was nor is Natural Freedom.

First then (with a Reverend (*b*) Author) it is to be considered, that if *Adam* had never fallen, and his posterity had remained in the same innocence, yet in order to civil life, they would have been capable of civil precept, and in reason one man, or more, should have had the superiority over all others, as Parents over Children; and the consideration of the divers orders of Angels, that never fell, evidenceth, that even in the state of Innocency, God designed Superiority, not Equality.

(*b*) Dr. *Hammond*'s Address to the Lord *Fairfax*, *p.* 8, 9. The State of Government in the first Ages Kingly.

But since from the Fall it is apparent, that the irregular passions of Men, have caused a need both of Rules and Rulers, Laws and Law-makers: it was but reasonable that God should, and it is most certain that he did design and appoint Government; and so gave not man that freedom which is supposed to be the foundation of this Doctrine. Hence we may note what God says to *Eve*, That her desire shall be subject to her Husband, and he shall rule over her: so that here is the first Dominion. And the second we find in Scripture, is, where God tells *Cain* that his Brother *Abel*'s desire shall be subject to him, and he shall rule over him; and this was as he was the first-born, though after he wickedly slew *Abel*.

Gen. 3. 16.

Gen. 4. 7.

We have reason to judge, (according to Scripture) that God gave *Adam* (as an universal Monarch) Dominion over all his Fellow Creatures, and of all Men that should be born into the World as long as he liv'd, and the like may be said of *Noah*: so that whatever property (as it is clear *Cain* and *Abel* had) and what share of Government over any part of the World, either of their Sons had, they held it all of them originally by gift and Assignment, Allotment and Authority, without awaiting the Election or consent of, or entring into any Articles or Capitulations with the People that were to be governed by them.

So that in the Infancy of the World all Men were born Subjects, either to him that was naturally their Father, or to him that by Right of *Primogeniture* was representatively their Father. That this continued for many succeeding Generations is most apparent in the Blessing that *Jacob* and *Esau* receiv'd from their Father *Isaac*. For *Rebecca* knowing that such a Blessing was of the same force, that now the last Will and Testament, or Deed of Gift of a Parent is, and of much more absolute force, contrived that way to obtain the Blessing of *Primogeniture* for her Son *Jacob*, that his Brother *Esau* might serve him.

(*d*) After

(c) *Dudley Digs, p.* 15. (c) After the multiplying of Mankind (though I cannot ſay with a Learned Author, there were ſo many abſolute Princes within the compaſs of a Pariſh, that a Man had ſcarce room to walk in a Territory, when a Common-wealth was lodged in a Cottage) yet it appears from *Gen.* 10. 32. That the Families that ſprung from *Noah's* Sons divided the Earth, and gave diſtinction to Nations, and the Cadets of the firſt Houſes travelling to diſtant places, exerciſed Authority, and gave Laws to their Deſcendants; and being thus ſeparated to ſettle new Plantations, every Planter becoming ſo by himſelf a Father, encreaſed to a Family, and that into divers Families, thoſe into a City, and thence into divers Cities, and at laſt into a large Dominion.

(d) Review of Obſervations, *p.* 2. (d) So that a King in the firſt Ages of the World was no more than a common Father, either by natural right, as a Parent, or after by a legal Right, as the eldeſt Deſcendant of ſuch a Father; and when the pleaſantneſs or profitable commodiouſneſs of one Soil allured ſeveral to covet it, then aroſe Conteſts, and the Conqueror poſſeſs'd it, forcing the Conquered to ſeek other Habitations, or made them his Slaves, and ſo a Succeſſion of ſome brave Princes enlarged their Dominions to Empires, eſtabliſhing them by juſt Laws, and good Government.

So upon the overthrow and breaking up of Kingdoms, Inſtance may be given that ſome victorious Perſon obtain'd the Peoples Subjection to him; for that being depriv'd of their natural common Father, and Sovereign, they neceſſarily entertained ſuch ſupply of their loſs, as their Fortunes could beſt afford them: and whatever thoſe conquered People did, it was no other but the chuſing of one to bear the known Office of the true natural common Father; even as thoſe might do, who either like Swarms and Colonies, voluntarily ſeparated from the main Stock, to more roomy and rich Plantations; or thoſe who eſcaped from the Conquerors Sword into a remote unpeopled Land, ſetled themſelves in Society, and under the Government of one. For as hereafter I ſhall make it appear, the world was grown to a great Age, e're any form of Government was known but what was Kingly. Whereas if the People had known of any ſuch Right they had of Government inherent in, and connatural to themſelves, we ſhould in the Sacred or Prophane Hiſtories have had Inſtances of it: whereas we find the very Savage *Americans* (who, if any People, live according to natural Inſtinct) to be govern'd by Kings, and not Republics.

Having thus far Illuſtrated the Government in the Golden Age of the World, wherein we find no Footſteps, or the leaſt tract of any popular Suffrages, but an entailing of Sovereign Authority; We may farther conſider, that the Government of the ſeveral Kingdoms in this World have been, and are by the appointment of the Sovereign of the whole World, not only by Gods appointment of *Moſes*, the ſeveral Judges, and Kings of *Iſrael*, and *Judah*; but by the frequent expreſſions in Scripture,

God appointed Kings.

ture, that by God Kings Reign, that Kings are the Miniſters of God, that God will give deliverance to his King, to his anointed, *&c.* By which Expreſſions we may rationally (*e*) conclude that God hath reſerved to himſelf the immediate Dependance of the ſupream Power, to ſhut out the reſtleſs and extravagant Multitudes from the frequent Revolutions they would make, and the deſolations they would occaſion, if they had any ground to think the ſupream Power depended on theirs, or that they were not bound to obey for Conſcience ſake their Governours.

(*e*) *Jus Reg. p.* 15. 21.

Whence alſo are they ſtiled Gods, but to denote they were not made by Men? And as it is moſt clear that inferior Magiſtrates derive their Power from the King, and not from the People, as ſupream: ſo by that Analogy which runs in a dependance, and chains through the whole Creation, Kings ſhould derive their Power from God alone, who is their King, and, as the (*f*) Apoſtle ſaith, are ordained of God, and ſo no humane Ordinance: for Supremacy is affixt to the King, but Governors are ſent by him; and if the King were the Creature or Creation of the People, it would have been expreſs'd that they were commiſſioned, or ſent by them; whereas it is expreſly ſaid, They are of God.

(*f*) *Rom.* 13. v. 13, 14.

The Teſtimony of Authors.

That Kings or Sovereigns derive their Power from God alone, and conſequently not from the People, is atteſted by the joint conſent of all unbiaſs'd Learned Men, Fathers and Schoolmen in all Ages, who have unanimouſly given their Suffrages for the ſame, as grounded upon ſolid Reaſon.

(*g*) So *Tertullian* ſaith, Let Kings know that from God only they have their Empire, in whoſe Power they only are. So St. (*h*) *Auguſtine*, Let us not attribute to any other the Power of giving Kingdoms, and Empires, but to the true God.

(*g*) *Contra Gentes.*

(*h*) *De Civitate Dei, lib.* 5. *cap.* 21.

So in the Civil Law, (*i*) we find *Deo auctore, noſtrum gubernante Imperium, quod nobis à Cæleſti Majeſtate traditum*: God being the Author, governing our Empire, which was delivered to us from the Heavenly Majeſty.

(*i*) *Cod. de veteri Codice enucleand.*

(*k*) *Juſtinian* acknowlegeth his Obligation to take care of his People, becauſe he received the charge of them from God.

(*k*) *Novel.* 6. *Inſtit. Nov.* 40, 45, 46, 133. *pr.*

And certainly the People are happier in ſuch acknowledgments, than if Kings think it only a charge conferred on them by the People, and that they were therefore only anſwerable to them.

The Reader that would be further ſatisfied, may conſult *Arniſeus*, *Cap. de eſſentia majeſtatis*. *Marca* Archbiſhop of *Paris de Concordia Sacerdotum & Imperii, Lib.* 2. *Cap.* 2. *Num.* 2. *Graſwinckelius de Jure Majeſtatis*, *Cap.* 8. *Num.* 2. The Learned and Loyal Kings Advocate of *Scotland*, and the Authorities I have cited in the Chapter of Monarchy.

Beſides what I have urged hitherto we may (with a (*l*) Reverend Author) conſider that the Sovereign hath an higher Power than the People can give, not as repreſenting them;

(*l*) Dr. *Hammond's* Addreſs, *p.* 10, 11.

them; but as repreſenting God himſelf. For every ſupream Magiſtrate hath a Power that never was in the People to give; for never any Man was by God or Nature inveſted with Power of his own Life to take it away, or kill himſelf lawfully. For all Chriſtians generally declare againſt this Self-murther, as a Crime equally againſt the ſixth Commandment, as the killing of any other Man.

Now this Power of Life being ſo eſſential a part of the Supremacy, and no part of the natural Liberty, cannot be inherent naturally in a Community of Men, which have no more Power ſo united, than each ſingle Perſon hath. So that though it cannot be ſaid with ſome, *Nemo eſt dominus Membrorum ſuorum* (for Man hath the power over his Members, to cauſe one to be cut off, for the preſerving the whole; and the *Jew* under Gods own Government, had power to make himſelf a Slave) yet this *Jus Gladii*, the Right and Power of the Sword (which is really the Sovereign Power) is by the (*m*) Ordinance of God, not the Donation of the People. For it was not in the Power of the People to diſpenſe with Gods Precept, Thou ſhalt not kill, nor to diſtinguiſh ſhedding of Blood with the Sword of Vengeance, from Murther; and conſequently the Power is not deriv'd to Kings and Princes by private Men, who cannot transfer that Power they never had; according to that known Maxim, *Nemo plus juris transferre ad alium poteſt, quam ipſe habet*: but it's beſtowed on them by God Almighty, who is the ſole Arbiter of Life and Death, who can only take it away, becauſe he gave it.

(*m*) Τοῦ Θεοῦ διαταγή. *Rom.* 13. 2.

The ſupream Magiſtrate therefore, as God's Deputy, hath the Power communicated to him, as an Endowment neceſſary to that Power which is deſign'd to protect and govern others. So *Agamemnon* having received contumelious Language from his Officers in a Council of War, to let them underſtand his Sovereign Power, tells them (*n*) Πᾶς γὰρ ἐμοὶ Διόθεν· That he had Power of Death.

(*n*) *Homer, Iliad.* 6.

When Kings are Elective, though it be the act of the People, and not of God immediately that deſigns or nominates the Perſon to that Office; yet doth not this Nomination beſtow this Power; but God who alone hath this Power, beſtows it on him who is ſo Elected. Which we may illuſtrate by the Example of chuſing inferiour Officers. For though a Corporation by the Grant of a Sovereign, hath Power to chuſe a Mayor, or chief Officer; yet they give him not the Power of Executing that Office ſo and ſo: For that is appointed and limited by the King's eſpecial Grace and Favour. The nominating of the perſon being granted to them by the Sovereign, but the qualifications of his Office and Power, are by the ſole Preſcript of the King's Charter and Laws.

Having hitherto founded my Reaſoning upon the Hiſtory of *Moſes*, and the Authority of Scripture, I might bring in a long Diſcourſe out of prophane *Hiſtorians*, *Greeks*, and *Romans*, as well

well as more modern Writers, who give an account of the Foundations of Kingdoms; but ſince a late (*o*) Author hath made ſuch a flouriſh out of *Polybius*, ſlily and maliciouſly endeavouring to repreſent Monarchy as a Tyrannical Government, who the τεία μίξη τὰ κεφάλαια τῆς πολιτείας, the three conſtituent parts, *viz.* Monarchy, Ariſtocracy, Democracy were not ſo evenly poiz'd, and attemper'd, *ad pondus*, as *Lycurgus* endeavoured it in the *Lacedæmonian* State: I ſhall content my ſelf with an Epitome (not a Paraphraſe, as the forementioned Author hath made) of what *Polybius* (*p*) hath left in his excellent Hiſtory; wherein he deducing matters from ſuch an Original as thoſe who knew not, or believed not the Creation could do, delivers us his ſence of the mutations and managery of Government to this purpoſe.

(*o*) French Monarchy, *p.* 16.

(*p*) *Lib. 6. Hiſtor. p.* 197. *Edit. Baſil.*

That when by reaſon of ſome great Inundation, great Plague or Death, all Inſtitutions and Arts having been loſt; In proceſs of time, by the propagation of thoſe that eſcap'd theſe Devaſtations, a multitude grew who herded according to their kind, and for the weakneſs of their Party (in reſpect of ravenous Creatures as well as their Savage Neighbors, we may ſuppoſe) they aſſociated together, it neceſſarily followed that he who in the Strength of his Body, and confidence of Spirit excell'd the reſt, obtain'd the Princedom and Empire, as we ſee in Bulls, Goats, Cocks, *&c.* and ſo the reſt obey'd that Man who was properly the Monarch, and in Proceſs of time, by familiar Converſation, and living together under this one Head, like a ſelect Flock or Herd, theſe Mortals began to think of Honeſt and Juſt, and their contraries, and by the noble or ignoble actions of ſome of the Society, the Sence of Honour and Diſgrace was impreſs'd in their Minds, and conſequently of Profitable and Incommodious. (*q*) He that was their Governour excelling in Power, and in the opinion of all endowed with thoſe qualifications, were judged good and profitable, and adminiſtring to his Subjects, what was competent to every of them. They now fearing no violence, moſt willingly ſubmitted themſelves to him, and he being venerable to them, with unanimous conſent they impugn and revenge themſelves on thoſe who oppoſe or conſpire againſt his Government; and ſo from a Monarch he becomes a King, when reaſon had obtain'd the Principality, which before Fierceneſs and Power poſſeſs'd.

Καταϰλυσμὸς, ἢ διὰ λοιμικὰς πεισάσης.

Συνέλευσία ϰὴ συνήθεια.

Τότε πρώτως ἔννοια γίνεσθαι τοῦ ϰαλοῦ ϰὴ δικαίου τοῖς ἀνθρώποις.

(*q*) *Idem, pag.* 198.

Ὑποτάττουσι ϰὴ σώζουσι τὴν ἀρχὴν αὐτῷ.

Ὅταν παρὰ τὸ θυμοῦ, ϰὴ τῆς ἰσχύος μεταλάβῃ τὴν ἡγεμονίαν ὁ λογισμός.

So that in all this firſt ſettlement of Monarchy or a Kingdom (in the pureſt ſtate of Nature we can conceive deſcrib'd) we have no mention in this judicious Author, of Compact, with the People, or Election, but of ſubmitting.

It is true upon the degeneracy of Kings, Factions ariſing, he ſpeaks of Election, not of thoſe of ſtrong Bodies only, and daring Souls; for ſuch he preſumes made themſelves Maſters; but of ſuch as by their Wills and Reaſon (experimentally diſcover'd in their Actions) were moſt agreeable to the Peoples liking.

Τόπους τε διαφέροντας ὀχυρώμασι καὶ τειχίζοντες.

But that this was done by the force of Faction, appears from what he ſubjoins, that thoſe who were thus deſtined for the Kingdom, ſelected ſpecial places, and encompaſſed them with Rampiers, or Walls, fortifying them for the ſecurity of themſelves, and to ſupply their Subjects with Neceſſaries; from whence aroſe the great Cities which had large Sokes, by which means they poſſeſs'd the whole Country of the Kingdom.

Οὐκ ἐκ τῶν χειρίστων, ἀλλ' ἐκ τῶν γενναιοτάτων καὶ μεγαλοψυχοτάτων.

I do own that he makes offence and hatred of the People, or envy againſt the ſucceeding Princes who were debauched and degenerated, to be the cauſes why in proceſs of time ſome of the Nobleſt became the leaders of the People, to repreſs ſuch Princes, and root out the Monarchy and Kingdom: But ſtill it was becauſe Factions encreaſed, and ſo Ariſtocracy was changed into Oligarchy; which ſet of Rulers oppreſſing the People, whoſe diſcontents being obſerv'd by ſome popular Perſons, they animated them to join to ſubvert the Oligarchy. Hitherto we find nothing of the imaginary delegation of the Peoples Power to one or more; but proſperous events crown'd their Rebellions againſt their Superiors. What follows is obſervable, that the People having ſlain the Optimacy, fearing the Injuſtice of Superiors, they durſt not ſet a King over themſelves, nor truſt the Government in the hands of a few, having ſo late Inſtances of their Tyranny and Sloth. So the ſingle and ſincere Hope which was only left in themſelves, induced them to eſtabliſh a Democracy, and ſo to themſelves receive the Truſt and Providence of the Common-weal, which the (*r*) Paraphraſt calls their laſt untainted hope, founded on themſelves, that is, in their own Strength.

Μόνης δὴ σφίσι καταλειπομένης ἐλπίδος ἀκοσμίας τῆς ἐν αὐτοῖς.

(*r*) French Monarchy, or Abſolute Power, *p.* 20.

So that till the forms of Government by a King or Tyrant, Ariſtocracy or Oligarchy were wholly ſubverted, we hear not a Syllable of the Peoples challenging a power, and then it is no wonder (when they have ſlain the richeſt, and divided the ſpoil, and have entertained an opinion that they ſhall never be Servants more; but live in an equal Freedom and Wealth) if they be blown up with a popular Pride, and call themſelves the ſupream Power. But what is this to the natural Freedom pleaded for, when it is nothing but the headſtrong unbridledneſs of the Multitude, that have caſt their Riders, and got looſe the Reins on their own Neck?

(*s*) *Idem, pag.* 199.

(*s*) *Polybius* goes on to tell us how Democracy was ſoon overturned after, though for a while thoſe who had Experience of the Oppreſſion of the Rich, were delighted with the Equality and Liberty of the preſent State, that ſeemed ſweet to them above all Treaſure: yet afterwards ſome growing Rich, little valued that Equality and Liberty, which cuſtom had made them ſleight and nauſeate; and ſo began to contemn the Poor, and excelling the reſt in Riches, began to covet Rule; yet knowing they could not by their own Intereſt or eminence of Vertue obtain it, they began to be laviſh of their Wealth, and variouſly bait the People, and ſo corrupt them into Tumults and Sedition;

Τότ' ἐκ ἔτι διὰ τὸ συνηθῶς ἐν μεγάλῳ πεπλῆσθαι τὸ τῆς ἰσονομείας καὶ παῤῥησίας ζηλῶσαι πλέον ἔχειν τῶν πολλῶν, μᾶλλον δὲ εἰς τοῦτ' ἐμπίπτουσιν οἱ παῖς οὐσίαις ὑπερέχοντες.

on; and the People being thereby raiſed to hopes of living upon the Goods of thoſe of contrary Factions, by following ſome magnanimous and daring Captain (who yet for his Poverty could not Lawfully aſpire to the Honours of the Commonwealth)found no better or eaſier way to riſe, but by heightning Factions, whereby Parties being imbodied, Murthered, Plundered, and Deſtroyed one another; till at laſt, wearied, or one Man getting a greater intereſt in the People than the reſt, and being fortunate to overtop the reſt, they ſubmit to ſuch, and after all their miſeries return again to Monarchy.

I cannot diſmiſs(*t*)*Polybius* without noting from him how preferrable Monarchy is to any of the popular ſorts of Government. For he obſerving that as Iron is waſted by ruſt, Wood by worms; ſo that although they might eſcape exterior defacings, yet they will decay by thoſe inbred devourers. So he obſerves that all ſimple Governments are apt to ſome evil that is peculiar and conſequential to their Nature, as he inſtanceth in a Kingdom changed into Monarchy abſolute, by which he means that which we now call Tyranny; Ariſtocracy into Oligarchy, and Democracy into Beſtial Chirocracy, when the Seditious of the people prevail more by Fiſticuffs than reaſon: When he enumerates the cauſes of the Envy and Hatred of the People againſt the King that is turned Tyrant, he never mentions that the People challenged any Original Right, or that they conferred any truſt upon him, or made any compact with him to govern ſo and ſo. But that ſome young Princes degenerating from their Juſt, Prudent, Wiſe and Valorous Anceſtors, giving themſelves up to Debauchery, and becauſe of their plenty following their Pleaſures, committed exceſs in ther Habits, eat more deliciouſly and luxurioufly, indulged themſelves in prohibited Luſts, by ſome neceſſities or wantonneſs galling the Necks of their Subjects, or committed ſome contumelious or outragious Act againſt ſome powerful Perſon, or committing the managery of affairs to ſome unfit or envied Perſon, loſt the affections of ſome popular perſons, and by their immerſing themſelves in Pleaſure, neglecting the Inſpection into their affairs, or by their ſloth and laſineſs, neglecting the timely redreſs of Evils, or ſuppreſſing of ſome growing Faction, gave opportunity to ſome of the moſt popular and daring of their Subjects to conſpire together to put an end to their Lives and Governments.

(*t*) Καθάπερ γὰρ σιδήρῳ μὲν ἰὸς, ξύλοις δ' θεῖρες, καὶ περιδόνες συμφυὲς εἰσι κῆμοί.

Idem, pag. 200. Δημοκρατία δ' ἀνεικάδης καὶ χειροκρατικός.

But in all this he mentioneth nothing of thoſe miſerable devaſtations, which are brought upon whole Countries, that in popular Governments are torn in pieces by them; as too often I ſhall have occaſion to mention. For certainly, one days miſrule by the Rable, may do more miſchief to a Country, than the whole age of a vitious Prince; and the pretences of making Government more eaſie for the People, and that the end of it is the Peoples ſafety, hath uſhered in all Tragical Revolutions and Rebellions; and however Philoſophers and other Writers of *Greece* and *Rome* declaim againſt Tyranny

and abſolute Monarchy: yet they conceal not the perpetual inteſtine, as well as Foreign Wars, betwixt one Commonweal and another; or what Butcheries Countries have undergone, whereever the People got a participation of the executive parts of the Soveraignty.

(u) Ἡ μὲν γὰρ Βασιλεία πρὸς βοήθειαν τὴν ἀπὸ τῦ Δήμυ τοῖς ὀπιεικέσι γένετο. Βασιλεὺς ἐκ τῆς ὀπιεικῶν καθ' ὑπεροχὴν Ἀρεσῆς, ὁ δὲ τύραννος ἐκ τῦ Δήμυ καὶ τῦ πλήθους. *Ariſt. de Repub. l. 5. c. 10. initio.*

It is not unfit to be obſerved what the great (u) Philoſopher notes, that a Kingdom is the refuge and defence of the good, againſt the injury of the People: for, ſaith he, a King is conſtituted of the good, and thoſe that excel in vertue and vertuous actions; but a Tyrant is taken out of the People and Multitude, againſt the Noble and Illuſtrious; as he inſtanceth in *Phidon* at *Argos*, *Phalaris* in *Ionia*, *Panætius* among the *Leontines*, *Cypſelus* at *Corinth*, *Piſiſtratus* at *Athens*, and *Dionyſius* at *Syracuſe*, by the cunning leading of the People. So that according to his opinion, and the experience of all ages, the People may be truly ſaid to be the Original of Tyrants, and not of Kings. For whereever an unlawful Government was introduced, which properly might be called Tyranny, it was brought upon the People by their own choice; ſome ambitious cunning man having wound himſelf into their good opinion, was by their ſtrength and aſſiſtance able to ſuppreſs the Nobility, and eſtabliſh himſelf their Executioner, after he had long been their Creature.

Thoſe who pleaſe themſelves with the notion of Compact and Agreement, moſtly do it for ſome ill end, to make a plauſible Scheme, to decoy the People into an opinion, that Princes can claim no more Power as of right belonging to them, than the People ſhall intruſt them withal; which they may from time to time (as they ſhall ſee cauſe in order to the pretended publick weal and ſafety) either enlarge or reſtrain at their pleaſure.

(w) Biſhop of *Lincoln*, Preface to the Power of Princes.

Theſe muſt ſuppoſe (ſaith a moſt profound (w) Scholar) a multitude all free without any ſort of dependences on Parents, under no reſtraint, but every one at full liberty to do what he liſteth, with an equality of Power in them, none having authority over other; which ſurely was never yet found in any People or Country, ſince the Creation of the World, if theſe men will own its Creation, or the Scripture-Hiſtory of it; and if they could in Authentic Hiſtory, point out ſome Parallel ſtory they would do well to produce it: for though I have quoted *Polybius* his conjecture of a ſtate neareſt it, yet he makes no ſuch inference from it that I can find. But the forementioned Reverend Biſhop hath ſuggeſted ſo many queries to be anſwered, before any thing can be yielded to in this way of contract, that it will puzzle the ableſt of the Patrons of this popular way of conſtituting Government, to ſolve any of them; whereby to ſatisfie any conſiderate man of the legality of ſuch a way, or the conſentaneouſneſs of it to Principles of nature, and the ſtate of Liberty, theſe men are ſuch pretenders to.

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It would be reſolved, whether Women and Children, Madmen and Fools, had the freedom of ſuffrage, as well as Men of Age, and Fortunes, and underſtandings? If any were excluded, who did it, and by what authority? If all were admitted, whether with equal right to every one, or with ſome inequality? Was the Wives intereſt towards making up the bargain equal with that of the Husband, and the Child with that of the Parents? and the Servant's (if there were, or could be any ſuch thing as Maſter and Servant) equal with that of his Maſter's? If one had not an equal ſhare and intereſt in the buſineſs, whence did the inequality ariſe? who made the difference among them? and what right had any man? and how came he to have that right to give more or leſs power to one than another?

If all were equal, who could ſummon the reſt to convene, or appoint the day and place of meeting? Or when met, take upon him the Authority and Office of regulating their proceedings, or preſiding or moderating in their Aſſembly, of determining ſuch doubts and differences as might ariſe, while matters were under debate, of calculating the voices, and drawing up the Articles of Agreement in caſe they ſhould agree?

Suppoſing all theſe doubts were cleared, and the Contract made as they would have it; it may be demanded, whether majority of Votes ſhall conclude all that are preſent, Diſſenters as well as others? Whether by vertue of an Act of thoſe upon the place, an obligation ſhall lie upon ſuch as are caſually, neceſſarily, or willingly abſent, when it was free for them to do ſo, no man having power to require their appearance? And whether a contract made by ſuch perſons as were at liberty before, can debar thoſe that ſhall ſucceed them in the next Generation, from the uſe of that liberty their Anceſtors had and enjoyed? If ſo, by what Law and Right are the ſaid reſpective perſons ſo concluded, and whence ſhould the obligation ſpring?

None of theſe look like the Dictates of the Laws of Nature, and other Laws beſides that (according to the *Hypotheſis*) could be none, when as yet there was no Government, and the Contract it ſelf as a bare contract (without the help of ſome Law or other to give it force) cannot operate upon any but the Contractors; for it can have no cogency upon thoſe that never gave conſent thereto.

I know no other reſolve can be given to moſt of theſe quæries, but that, as it is fabled of *Thebes*, that the Stones that compoſed the Walls, came into their places by the Muſick of *Orpheus*, without any Artificer's hand: So ſome cunning and fluent Orator, learned above the rudeneſs of ſuch an age, who had ſignaliz'd himſelf by many feats of Arms, Arts and Skill, by which he had got an aſcendent over the People, and yet ſo circumſpect as to have avoided envy and emulation; ſuch amongſt them who was moſt hardy to encounter dangers,

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had moſt bodily ſtrength to overcome any ſingle perſon, and ſuch as had by degrees worn of the rudeneſs of his Companions, and taught them ſomething of conſideration, and the uſe of reaſon to underſtand juſtice and honeſt dealing, and to ſee the advantages that prudence and a wiſe head hath over-raw and uncultivated ſtrength, not only in deciding controverſies, and adminiſtring Juſtice, but even in providing againſt, and expelling danger: Such an one as this might have made himſelf the head of a Colony; but what is this to the Original power of the People?

Have we not much more reaſon to judge the riſe of Government (as I have hitherto inculcated) was from primogeniture, and by Gods appointment, than from any ſuch Chaos, or exiſtence of Præ-Adamites, or a race of People ſprung up none knows when or where.

To gratifie the inſatiable Republican as much as may be, let us ſuppoſe a Colony, or ſwarm of younger Brothers, men that lived poorly in their native Country, Women, Children and Servants, not tied by any preceding Allegiance to a Prince, or to have ſhaken off the yoke, or to be baniſhed, or freely diſmiſſed by thoſe under whoſe Government they had been born, and to be abſolved from all Allegiance, and declared manumitted and reſtored to that abſolute freedom, which they could claim as the birth-right of mankind, that priviledge of nature equally common to every one as the air and light, and to enjoy this freedom as an unlimited power, to uſe their abilities as will did prompt; and thoſe to paſs into an unpeopled Land, which no Prince or People laid a claim to: Would not every one conclude theſe were as free to live as they liſted, as any people under the Sun; and to be any ways reſtrained of this, would be very grievous, and an Invaſion of that right to freedom every one might challenge?

Yet can it be conceived, that theſe could continue long without the conſideration, that it was not ſo delightful to do what every one liked, as it would be miſerable to ſuffer as much as it pleaſed others to inflict; or that the powerful could take comfort in that hoſtile eſtate, wherein he was in continual fears of others miſchievous deſigns againſt him, who had in this imagined ſtate (*x*) as much right in any thing as the preſent Poſſeſſor.

(*x*) *D. Digs* Unlawfulneſs of Reſiſtance, *p.* 3.

The conſideration of this ſurely would oblige every one to transfer his particular power into one or more hands, tying themſelves by obligation, not to make uſe of that natural power of reſiſting the power ſet over them, but to aid him or them, when he or they ſummoned their ſtrength, or required their aſſiſtance. In requital of which ſubmiſſion of private ſtrength, the whole Government becomes their Guard, whereby they are ſecured from the dangers of private injuries.

But can it be thought that any ſuch Governour or Governours would take upon him or them, the burthen of ſpending his

his whole time in watchfulneſs, anxiety and care, for the preſerving ſuch a ſociety in peace, and the free enjoyments of what they ſhould acquire, without having a power to execute impartial Juſtice upon Offenders, in raiſing forces to ſuppreſs any Tumults or Inſurrections, in rewarding and promoting the inferior Miniſters; or would yield himſelf to be accountable to any party of that people who ſhould fancy themſelves aggrieved.

But on the other ſide, to make the Government uſeful, it muſt be eſtabliſhed, that every one yield his life to Soveraign Juſtice, to be capitally puniſhed, if he tranſgreſs ſuch Laws as they had agreed upon to be ſo inflicted, or in leſſer offences to yield to proportionable puniſhments.

Now if it were to be underſtood as a tacit Covenant, that when ever the Subjects found themſelves aggrieved, they might re-aſſume their Power, and depoſe or change their Soveraign; every Offender that could engage his Relations or Dependents to back him, would be remonſtrating, and to avoid the puniſhment (eſpecially if Capital) would adventure his life in Arms, and ſo defeat the great end and deſign of Government.

But further, ſuppoſing that this People oblige themſelves and Poſterities, by Oaths and other Authentic Bonds, to aſſiſt the Government againſt all Diſturbers, Domeſtick and Foreign; and to be ſubject, and pay all due obedience to the Government and Laws: By what juſtice, or reaſon, or pretence of natural Right, could they or their Poſterity claim a power of re-aſſumption of that Original Power they had deveſted themſelves of?

It is manifeſt that a People may conſent to ſubject themſelves to a Soveraign without limitation, as appears by the famous (y) *Lex Regia* among the *Romans*, wherein it is expreſſed thus, *Populus Imperatori, & in Imperatorem, omne Imperium ſuum, & poteſtatem tranſtulit*, That they transfer to and upon their Governour all the Power they ſingly, or in combination had. After which the right of Nature, which remains for them innocently to make uſe of, is that freedom, not which any Law gives, but which no Law takes away.

(y) *Inſtitut. de Jure naturali Gent. & Civ.* 56. *Ulpian, lib.* 1. *ſect. De Conſtitutione Principis.*

Therefore, if we conſider Men once to have been in ſuch an imaginary State of freedom, and after to have yielded up themſelves to be ſubject, and thereto tyed themſelves and their Poſterities, in the ſtrongeſt obligations that can be invented; What power can ſuch People now have of ſubſtracting their obedience, ſince their Anceſtors, many Centuries of Ages ſince, and in all ſucceſſive Generations, have either transferred what Power they ever could claim, to their Governours, or by his Laws and their own conſents have bound themſelves in fidelity to the Soveraign, his Heirs and lawful Succeſſors.

So that in what *Utopia* ſoever this Doctrine of the Original of

of Power being in the People, and their Power of re-aſſuming it, may be aſſerted; it can have no place in our happy Iſlands. For the Government of *England* is a ſucceſſive Hereditary Monarchy, declared ſo by all our Laws: ſo that with us, allegations of natural Right have no ſort of place, our Kings having their Power eſtabliſhed by Birth-right, by Conſent, by Preſcription and Law, which are all the ways whereby any right can be legally eſtabliſhed.

Therefore we muſt look upon all ſuch as caſt in ſuch Baits for the People to nibble at, that they intend to make a prey of them; and having faſtned the gilded Hook in their Jaws, may draw them out of their own Element to a free air indeed, but ſuch as will ſtifle them. For when any Subjects (by the inſtigation of ſuch pretended Patriots) are excited to put in their claim of Original Power, and ſhake the Government; though their Rebellion be proſperous, it is not without vaſt effuſion of Blood that the Government can be changed. After which, how will it be poſſible that the Community of the People can be put into that priſtin ſtate of freedom, thoſe State-Mountebanks promiſe? but rather into an Anarchy, which is contrary to the end of all Society, and to quiet and peace, and is the Parent of all confuſion, which is much worſe than the hardeſt ſubjection.

This truth (by a moſt chargeable tryal) we experimented in the late War, when the Pretended Saviours of the Nation, and great Promoters of Spiritual and Temporal Liberty, having wheedled the People into a belief of their honeſt Intentions, and by their proſperous Arms overthrown the moſt temperate Monarchy, by the effuſion of infinite Blood and Treaſure; by pretended agreements of the People, they aſſumed the Government to themſelves; enſlaving both the Nobility, Gentry, and Commonalty, more than any Foreign Conqueror would do, or ever their Anceſtors had been in any Age; and the Golden Scepter, and that of King *Edward* with the Dove, was turned into a Rod of Iron and a Flaming Sword, Baſilisks and Fiery Serpents.

CHAP.

CHAP. IV.

The Benefit of Government from the Eſtabliſhing and Inſtituting of Laws.

THe (*a*) Philoſopher deſcribes Law to be the Promulgation of what by the common conſent of the City is defined, which commands upon Terms how every thing is to be done. Which is to be underſtood after Government is eſtabliſhed, where the Lawgivers are agreed upon, and the Subjects known that are to obey them.

(*a*) Λόγος ὡρισμένος καθ' ὁμολογίαν κοινὴν πόλεως, μηνύων τῶς δεῖ πράττειν ἕκαστα. *Rhetor. ad Alex. c. 1.*

In another place, the ſame (*b*) Philoſopher ſaith, Laws are to be declared concerning all things that may reſpect the common Benefit of all, or of the Optimacy, *viz.* the Nobility or Prime Gentry, or the Sovereign, or be agreeable to Vertue, or to any other Neceſſity of the People: and theſe he calls Common Laws.

(*b*) Ἡ τῶ κοινῆ συμφέροντος πᾶσιν, ἢ τοῖς ἀρίστοις, ἢ τοῖς κυρίοις, ἢ καθ' ἀρετὴν, ἢ καθ' ἄλλον τινα τρόπον τοιοῦτον. *Ethic. Nicom. c. 5.*

The ſame (*c*) Learned and Wiſe Compoſer of Politicks tells us, That the Law hath no force to compel Obedience, but as it receives it from Uſage and Cuſtom; and this ſprings not from any thing ſo much as from length of Time, and multitude of Years.

(*c*) Ὁ γὰρ νόμος ἰσχὺν οὐδεμίαν ἔχει πρὸς τὸ πείθεσθαι, πλὴν παρὰ τὸ ἔθος· τοῦτο δ' οὐ γίνεται εἰ μὴ διὰ χρόνου πολλοῦ. *De Repub. l. 2. c. 6.*

Of theſe kind of Laws few Nations make ſuch uſe as we do in *England*, under the Title of Common Laws and Cuſtoms; and it is no ſmall Credit to them, that ſo Judicious and Ancient a Writer hath given ſuch a Character of theſe kind of Laws, by which we have ſomething more than a ſhadow of ours.

The ſame (*d*) Philoſopher likewiſe, with great Judgment, tells us, That to forego Laws received and long uſed, and over-eaſily to ſubſtitute new ones, is to make weak and infirm the Laws themſelves. Yet he is not for tying Poſterity to the Laws of their Progenitors too ſtrictly; for that it is likely (ſaith he) the firſt Anceſtors of them being ſuch as he calls γηγενεῖς, Sons of the Earth, or ſuch as eſcaped from ſome great Calamities and Deſtructions, were rude and illiterate, ſuch as he calls πυκνίλας καὶ ἀνοήτους: ſo that it would be (*e*) abſurd to perſiſt in their Decrees; therefore he ſaith, All ſeek not their (*f*) Countrys Laws, but thoſe onely that are good, as generally ſuch are which have had the Approbation of Ages.

(*d*) Ὥστε τὸ ῥᾳδίως μεταβάλλειν ἐκ τῶν ὑπαρχόντων νόμων εἰς ἑτέρους νόμους καινοὺς, ἀσθενῆ ποιεῖν ἐστι τὸ τῶ νόμω δύναμιν. *Ibid.*

(*e*) Ὥστε ἄτοπον μένειν ἐν τοῖς τούτων δόγμασι. *Ibid.*

(*f*) Ζητοῦσι δ' ὅλως οὐ τὸ πάτριον, ἀλλ' τ' ἀγαθὸν πάντες. *Ibid.*

By what hath been noted from ſo Ancient and Judicious an Author, I may eaſily infer, That Laws reſulted from Government, and were the neceſſary Products of ſuch Counſels as the firſt Leaders or Monarchs entertained to order their People by; and ſince he (*g*) makes the Laws of ſuch like validity and force in the Commonwealth, as the Rules and Orders of Parents in private Families, we may well conclude, That as thoſe had their Origination from the Will of the Father of the Family, ſo the other from the Prince, who is his Peoples Common Parent.

(*g*) Ἐν ταῖς πόλεσι ἐνισχύει τὰ νόμιμα, καὶ τὰ ἤθη, ὅτω ἐν οἰκίαις οἱ παλαιοὶ λόγοι κληθῆ. *Ibid.*

Therefore, in *Homer* Kings are called Διοτρεφέες, Givers of Laws, or Judges of the People, as well as Ποιμένες, Paſtors or Feeders, Conductors, Defenders or Shepherds of the People. So in Sacred Writ, the firſt Hebrew Captains or Kings were called Judges. Therefore *Pomponius Lætus* ſaith, In the ancienteſt Times, before Laws were agreed upon, the King's Will was a Law: And (*i*) *Dionyſius* is expreſs, That the intimation of their Mind by Signs, and their abſolute Wills, were in ſtead of Laws.

(*i*) *Regis nutus & Arbitrium pro Legibus, lib.* 10.

(*k*) *Tacitus* giving an account of the *Roman* Laws, ſaith of *Romulus*, That he commanded at his own pleaſure; and after him *Numa* bound the People with Religion and Divine Laws. Some were found under *Tullus* and *Ancus*; but the principal Inſtitutor of Laws was *Servius Tullius*, to which even Kings ſhould obey; that is, they thought themſelves obliged to obſerve and keep the Laws they had appointed. He then notes, That after *Tarquin* was expell'd, the People prepared many Laws for the defence of their Liberty, and to ſtrengthen their Concord againſt the Factions of the Fathers.

(*k*) *Romulus ad libitum imperitaverat, dein Numa Religionibus & Divino Jure populum devinxit. Sed præcipuus Servius Tullius ſanctor Legum fuit, quis etiam Reges obtemperarent.* 3 Annal.

A late Judicious (*l*) Author ſaith, That God and Nature inveſting Primogeniture with the Right of Kings and Magiſtrates, they made Laws; and this not being obſerved, or wilfully diſowned by ſome Popular Patrons (who would poſſeſs the People, that the Laws made Kings and Governours) hath created the greateſt Miſchiefs, by giving an Inlet to the Changes of Governors and Government. For, granting this moſt enormous Doctrine, and dangerous Principle; Laws being alterable for the Convenience of Prince or People, by conſequence the Right of the Sovereign (if it be onely from the Laws) muſt be precarious alſo.

(*l*) *Nalſon*, Common Intereſt, *p.* 14, 15.

This Opinion is in it ſelf moſt abſurd and unreaſonable; for there never could be Laws, till there was ſome Form of Government to eſtabliſh and enact ſuch Laws, and give them their energy and vigour: For nothing can have the force or power of a Law, or oblige men to Obedience, unleſs it proceed from ſuch Perſon or Perſons as have a Right to command, and Authority to puniſh the Diſobedience and Neglect of thoſe who ought to be ſubject to it: So that it is almoſt impoſſible to find the leaſt Footſteps of Law, that is by far ſo ancient as Government.

If we conſider the Infancy of the World, when Nations were divided by the Swarms that made new Colonies; we may eaſily conceive, that Differences and Quarrels would not onely fall out amongſt them about Boundaries; but within the Diſtrict of one Government, the Shares of diſtinct Families and Perſons would be allotted, and theſe would require the Preſervation of thoſe Peculiars, from the Incroachment of Thieves, Robbers, or other miſchievous Perſons: From whence muſt ſpring a neceſſity of Laws, to prevent Domeſtick Quarrels and Injuries, and to aſcertain to every man his Right, and effect thoſe good things which would make the Society happy.

Which

Which Laws (as far as we have any Record of Hiſtory) were firſt appointed by thoſe who firſt led the Colonies, or ſuch as they chuſe out to aſſiſt in ſuch a deſign of concern, who being ſupream over the People, had the only Power of making Laws, and exacting obedience to them: Conſentaneous to which the Serjeants at a late Call gave this Motto, *A Deo Rex, a Rege Lex.*

The Benefits Societies enjoy by Laws.

But however we conceive of the firſt Authors and Inſtitutors of Laws, it no ways leſſens the benefit all Societies enjoy by being govern'd by Laws, adapted to the Conſtitution of the People and Government. For as (*m*) *Ariſtotle* obſerves, Of all living Creatures Man is the beſt; ſo he is the worſt, if not governed by Laws and Judgment.

(*m*) Ὥσπερ γὰρ τελεωθὲν, βέλτιστον ἁπάντων ζώων ἄνθρωπός ἐστιν, οὕτω καὶ χωρισθὲν νόμου καὶ δίκης, χείριστον πάντων. *Polit. lib.* 1. *c.* 2.

Both (*n*) *Plato* and * *Ariſtotle* agree, that Men Juſt and moſt Eminent in Vertue, being as Gods among Men, are under no Law, living as regularly (*o*) on their own accord, as others conſtrained by the Laws; for theſe good Men are Laws themſelves, exciting others to Vertue by their Examples. Yet ſince this is but the Portion of a few, there is a neceſſity of enforcing the Laws by Authority upon thoſe that are not obedient to them, nor a Law to themſelves.

(*n*) *Lib.* 12. *de LL.*
* *Lib.* 5. & *ult. Ethic.*
(*o*) Τοιούτῳ οὐκ ἔστι νόμος, αὐτοὶ γὰρ εἰσι νόμοι. *Polit. lib.* 3. *c.* 13.

The uſefulneſs of Laws.

As to the uſe of Laws, the (*p*) Orator tells us that by their Authority we are taught to ſubdue our Luſts, to circumſcribe, and bound our unlawful deſires; to defend our own, and reſtrain our Eyes and Hands from that which belongs to others.

(*p*) 1 *de Oratore.*

They were, ſaith the ſame *Cicero*, (*q*) invented for the ſecurity of every one, a greater and more plentiful Inheritance coming to us by them, than from thoſe that left us our Eſtates.

(*q*) *Major hæreditas unicuique noſtrum a Jure & Legibus quam aliis a quibus illa bona relicta ſunt.* Id. pro Cæcinna.

Theſe are fitted for the Diſeaſes of the Common-wealth, *ex malis moribus oriuntur bonæ leges.* They reſtrain Men from their depraved Appetites, the over-boilings of their Luſts, the debauchery of their Lives, the Injuſtice of their Rapines, ſtop the Effuſion of Innocent Blood, ſecure every Man's Intereſt, inſtruct and diſpoſe all to do well, and ſecure them when they do ſo.

Hedges are ſet up (ſaith Mr. *Hobs* (*r*)) to ſtop Travellers, and keep them in the way that is allowed and preſcrib'd, and for hindring them from chuſing a way for themſelves. So Laws are made to guide, govern, and puniſh Men, who preſume to decline the Rule, and chuſe another to walk by, that is more agreeable to their own Appetite and Convenience. The pooreſt neceſſitated Man (ſaith a (*s*) Judicious Author) amidſt the Calamities of his wretched Life, would yet be more unhappy, were not Laws and Government his Sanctuary. Oppreſſion, the heavieſt of all miſeries, would cruſh him to pieces, and break the Repoſe of his ſhorteſt Slumbers. The malice of the Clown, the dark Arts of the City would ſurround us; and what we moſt prize (tho' we want the comfort of it) no Man's Life could be ſafe a minute without them; nothing could be ſure, nothing certain, no commerce, no converſation: Theſe protect the Orphan, the Widow, and the Stranger.

(*r*) Civil Wars.

(*s*) *Fr. Whyte*, Sacred Laws.

Seneca elegantly calls the Laws, *Virtutes Armatas*, becauſe they compel evil manners into good order: for without Laws Men are but a more cunning and pernicious ſort of Brutes; and where they are inſtituted and prevail, humane Nature is moſt civilized, refin'd and polite.

It is ſaid of the Liberal Arts, that *Emolliunt mores, nec ſinunt eſſe feros*: They ſoften Mens minds and manners, they correct that churliſhneſs of temper, and addulce and mellow the auſtere, ſowre and crabbed Diſpoſition, tame and make gentle the Savage Natures, file off the Aſperities of them: all which is equally true of the force and efficacy of the Laws put in Execution.

What would this great World we live in, be leſs than a great Bedlam, were it not for theſe Political Combinations, civil appointments, and Laws which in all places and Countries not only curb and command that untamed Pride, Fury, and Malice, which too naturally reſides in many; But the Laws likewiſe form and incorporate Men into civil Societies, making thoſe perſons capable of Living, converſing, and dwelling together, as Men endowed with rational and religious Faculties; who otherwiſe would appear no better than a company of wild and Savage Creatures.

The Honour given to Law-makers.

So great Veneration had the Ancients for the Laws, that they eſteem'd the Lawgivers (*t*) Holy, and ſuch as had Correſpondence with the Deities they worſhipped, and were, while they lived, for theſe great Bleſſings to their People, deified. So *Minos* among the *Egyptians* makes *Mercury* the Author of the Laws, and among the *Cretians*, *Jupiter*. *Lycurgus* among the *Lacedæmonians* fathered them on *Apollo*, *Numa Pompilius* derived them from the whiſpers of the Goddeſs *Ægeria*: the *Perſians* from *Zoroaſter*, *Xamolxis* among the *Goths*, deduces them from *Veſta*; and that *Moſes* received the *Jewiſh* Laws from God Almighty we all believe.

(*t*) *Stephanus Niger Expoſit. Carm. Pythag.*

Leges primo rudibus hominum animis ſimplices erant. Maximeque fama celebravit Cretenſium quas Minos, Spartanorum quas Lycurgus; ac mox Athenienſibus quæſitiores jam & plures Solon præſcripſit. Tacit. 3 Annal.

So that as every where we find the Heathens make the Gods deſcend for their Production, and celeſtial Wiſdom to flow into them (ſaith the learned Mr. *White* in his Sacred Laws of the Land; in which little Treatiſe is comprehended a great deal of curious Learning) and who further adds, That as *Livy* allows to Antiquity (mixing things humane with divine) to deduce the Original of Cities from Gods or Goddeſſes, to make their beginnings more majeſtic; the ſame may be ſaid of the Laws (ſaith my learned Author) if it be Lawful to Canonize any, to carry them up to Heaven, or fetch them down from thence, that Glory is alone due to the Laws, yea to the ſacred Laws of our Land: And in another place he ſaith, It was not ſo much the Charms of the *Sibyls* Leaves, nor *Numa's* Shield, or the *Palladium* that made the *Roman* Common weal ſo much to raiſe its lofty Head, as the juſt and wholeſome Sanction of the Laws obeyed and reverenced.

On

On the contrary, *Bodin* (*u*) obſerves, that the overthrow of *Carthage* was without difficulty, and certainly prognoſticate d, ſince neither Vertue nor Law had place there. (*u*) *De Republica:*

Hence the Orator obſerves, That if the Laws be once abandoned, or but negligently guarded, not to ſay oppreſſed, there is nothing any man can be ſure to receive from his Anceſtors, or leave to his Poſterity. Which leads me to the ſecond head of the Benefit by Government, which is Propriety.

CHAP. V.

Propriety ſecured by Government.

WE find that *Plato*, (*a*) *Socrates* and *Lycurgus*, propoſed a Community of all things in their Commonwealth, not only in Goods, Chattels and Lands, but alſo in Wives and Children. (*a*) *Ariſt. Polit. lib.* 2.

As to Community of Goods, the Argument that *Socrates* uſed was, That if every one might call every thing his own, and not his own, it would be a means whereby a City would be perfectly one.

On the contrary, *Ariſtotle* argues, That this would create endleſs diſputes. For he that took pains would never agree that he who took no pains ſhould have an equal ſhare; and in a little time, one would be coveting a larger dividend than another, and this would deſtroy the great vertue of Temperance, and would allow it no place: for that conſiſts in abſtaining from what is anothers. Neither would there be room for Liberality, if none had of his own to give. Beſides, by poſſeſſing in common, Sloth, Idleneſs and Negligence would be encouraged; (*b*) becauſe whatever thing is common to many, hath leſs care imployed about it, or it is not with that ſeduloufneſs provided for, becauſe what is every bodies work is no bodies work: according to our Engliſh Proverb, The mean Pot never boils well. So he concludes, That poſſeſſing in common gives more occaſions to differences, than where every one knows his own. Therefore it is more conducible to the well-being of a People to unite in one order of Diſcipline, than in unity of Stock and Community of Goods.

(*b*) Ἥκιστα γὰρ ὅπου μελείας τὸ πλεῖστον κοινὸν, ἧττον γὰρ ἰδίων μάλιστα φροντίζουσι, ἧττον ἢ κοινῶν ἧττον. *Polit. lib.* 1. *c.* 3.

There was ſome difference in the *modus* of this community. For we read that *Pericles* and *Cimo* pulled down the Encloſures of their Gardens and Fields, that the meaner ſort might have free liberty to take the Fruits. This kind of Community was received at *Tarentum*, and the *Agrarian* Law at *Rome* allowed ſomething of it.

But I believe this kind of Community was little practiſed, but rather every one enjoyed his ſeparate ſhare, and ſome Commons,

Commons, as we have in *England*, were beſt un-encloſed, according to that of (c) *Boiocolus* in *Tacitus*, That as the Heavens were given to the Gods, ſo the Earth was given to Men; and thoſe places that were empty or unpoſſeſſed in ſeveral, were for the publick, or common to all.

(c) *Sicut cælum Diis, ita terras generi mortalium datas; quæque ſunt vacuæ, eas publicas eſſe.* Annal. l. 13.

The Anabaptiſts in *Germany*, were very earneſt to have obtained ſuch a Community, where they were powerful enough to eject the right Owners out of their Eſtates, pleading the Apoſtles uſage: And in our late Confuſions (among the many revivals of obſolete opinions and Hereſies) we had ſome that were very fond of a notion, That the perfecteſt State of a Commonwealth was not only where there ſhould be no diſtinction of Dignities and Degrees, but Eſtates ſhould be levelled; and ſome that foreſaw the People would not eaſily conſent to this (as an Eſſay) begun to dig and cultivate Commons, enticing the Poor to joyn with them, of which, as I remember, one *Everard* was the chief.

(d) *Ariſt. Polit. lib. 2. c. 3.*

Againſt Community of Wives.

As to Communities of Wives, (d) *Plato* would have it ſo, that becauſe, when every one might call every Mans Wife and Child his own, there would be an amicable concord in the enjoying and providing for them. But the Philoſopher argues againſt this, much what as he did againſt the Community of Goods; eſpecially, by reaſon that the Children would be neglected by the Fathers; none being certain whether ſuch or ſuch a Son were his or no; and ſo all Paternal affection would be aboliſhed, and all Cognations wholly obliterated, and there would be no way to diſtinguiſh ones own Iſſue, but by the ſimilitude; as among the *Garamants* of the ſuperior *Africk*, and the *Pharſalian* Mare (e) which was called Juſt, becauſe ſhe had always her Foals like the Horſe that got them. Beſides that, *Parricide* might be committed, and injury done by Children to Parents (which no civil Government ought to allow) and yet the Father not be truly known.

(e) Ὥσπερ ἡ ἐν Φαρσάλῳ κληθεῖσα Δικαία ἵππος. *Ib.*

Subjects now very ſollicitous to preſerve their Properties.

But to leave this, becauſe I do not read that any Commonwealth did ever, or not long enjoy the benefit of any ſuch inſtitution; we may note, that as in other things, ſo in this, the cuſtom of Men is much changed. All being now ſo jealous of any breach made upon their Property, that Princes are looked upon as Tyrannical and Arbitrary, that ſhall, for the neceſſary ſupport of the Government, lay any impoſition upon the People, without their conſents; which made, in King *Charles* the Firſt's time, that outcry againſt Ship-money; though the Legality of it was owned by twelve Judges, and very ancient Records were produced, and much learning and reading ſhown in the arguments for it. But this point is now adjuſted to the ſatisfaction of the whole.

The Privileges of the *Engliſh* Subjects in their Property.

The Engliſh Subject enjoys many choice peculiar Privileges and advantages, far tranſcending thoſe of the Subjects of moſt Princes: So that any rougher touch upon that tender part, muſt needs gall, and the lighteſt Yoak be uneaſie to the neck

neck unaccuſtomed to it. By his Birth-right he hath ſomething he can call his own; he hath not only the protection of his Perſon, but the inheritance of his Freehold, his Liberty and Property ſecured to him by Law; he cannot be violently aſſaulted in the one, or forceably invaded in the other, but the publick Juſtice of the Kingdom will be ſatisfied for it, and call the Aggreſſors to a ſtrict account.

We have ſuch a grand Charter of all juſt and reaſonable Priviledges and Immunities, continued and confirmed to us, by the Piety, Munificence and Royal bounty of our Princes, that we may diſpute peaceable and happy living with all other Subjects of the World.

The Government we live under, being ſetled and ſupported by known and excellent Laws, ſuch as for their policy and prudence, juſtice and equity in their compoſition, challenge all the conſtitutions of *Europe* (in which part of the World are (if any where) to be found the greateſt perfections of Human Nature) to ſhew the like. They do ſo juſtly and clearly ſupport the Grandeur of Majeſty, the Dignity of the Crown, with the Peace, Liberty and Property of the Subject, that all Nations round about envy us for that felicity they can never hope to enjoy.

Whether Property was before Government, or not.

To diſturb this bleſſed condition of the Engliſh Subject, there are two Extremes: The one of a People fond of a Notion, of the Primitive fundamental of Government in the People, that they will needs have Property in order of Nature before Government; without conſidering that nothing is gained to their advantage by the conceſſion of it. For it muſt alſo be (*f*) proved, that it was before it in order of time; for as one of the principal ends of Government is the preſervation of mens acquiſitions, of Cattle and Fields, by their induſtry; ſo we muſt ſuppoſe ſome Government firſt, becauſe the right which any man hath to the acquired ſtock and lands, muſt be aſcertain'd to him by ſome Law, which ſuppoſeth Government. So that the diſpute (ſaith the Reverend Biſhop) is *de Lana Caprina*, and when men have crowded themſelves into the Circle, they reap nothing but a Brainſick giddineſs; and it is like the diſpute in *Macrobius*, Whether the Hen or Egg were firſt.

(*f*) Biſhop of *Lincoln*'s Preface to Power of Princes.

All that believe the Creation, muſt own, that *Adam*'s Government was before any Mans property, and the like may be ſaid of *Noah*; ſo that there is no need to have recourſe to Articles, or capitulations with the People (which thoſe make ſuch a noiſe with) unleſs they can firſt evince the World to be Eternal, and Men to have ſprung in ſome rank Soil, as *Tubera terræ*, Muſhroms after a fruitful ſhower.

Againſt Arbitrary Sovereignty.

Another Extreme is what Mr. *Hobbs* every where in his *Leviathan*, endeavours to eſtabliſh, (*viz.*) That the Sovereign ſhould be ſo abſolute and ſo arbitrary, that he ſhould upon Exigents of State, or at his own pleaſure, have the diſpoſal of

of every Subjects fortune, which how neceſſary it may be for vaſt Empires (ſuch as the *Ottomans*) I diſpute not. But the Soveraigns of Chriſtendom, eſpecially of *England*, take no ſuch meaſures to the advantages of themſelves, or their Subjects ſlavery.

The moſt judicious Earl of *Clarendon*, in his eleborate Treatiſe againſt (*g*) Mr. *Hobbs*, hath with great judgment refuted this opinion, from whoſe Armory I ſhall borrow ſome of the Artillery, though I dare not preſume to uſe them with the ſame dexterity, and addreſs his Lordſhip doth.

(*g*) Survey of *Leviathan*, *p.* 110.

This Propriety (ſaith he) introduceth the beauty of building, and the cultivating of the Earth, by art as well as induſtry, that they and their Children might dwell in the Houſes they were at the charge to build, and reap the Harveſt of thoſe lands they had been at the charge to ſow: whatſoever is of civility and good manners, all that is of art and beauty, of rule and ſolid wealth in the world, is the product of this; the Child of beloved property; and they that would ſtrangle this Iſſue, deſire to demoliſh all buildings, eradicate all plantations to make the Earth barren, and live again in Tents, and nouriſh their Cattle by ſucceſſive marches into the Fields where the Graſs grows. Nothing but joy in propriety redeemed us from this barbarity, and nothing but ſecurity in the ſame can preſerve us from returning to it again.

If there be no Propriety (continueth the great Lord) there is nothing worth defending from foreign Enemies, or from one another, and conſequently it is no matter what becomes of the Commonwealth. For the Government can never be ſo vigorouſly aſſiſted by a People who have nothing to loſe, as by thoſe who defending it, defend their own Goods and Eſtates; which if they do not believe their own, they will not much care into whoſe hands they fall.

(*h*) Seneca. *Jure civili omnia Regis ſunt, & tamen illa quorum ad Regem pertinet univerſa poſſeſſio, in ſingulos dominos diſcerpta ſunt, & unaquæque res habet poſſeſſorem ſuum. Itaq; dare Regi domum & mancipia & pecuniam poſſumus, nec donare illi de ſuo dicimur. Ad Reges enim poteſtas omnium pertinet, ad ſingula proprietas.*

To this wiſe Lord I may add what a great (*h*) Stateſman and Scholar hath long ſince obſerved, That though by the Civil Law all are the Kings; yet even thoſe things (whereof the Univerſal poſſeſſion belongs to the King) have their peculiar Owners: So that we may give the King, Houſe, Freehold or Money, yet are not ſaid to give him his own. For to the King the Power over all appertains, but to every ſingle Perſon his Property, according to that of *Bulgaris* to *Zeno*, *Omnia Rex poſſidet Imperio, ſinguli dominio.*

If it were thus under the abſolute Power of the *Roman* Emperors in *Seneca*'s time, how much more ſecure may we judge Propriety in ours, when ſo guarded by the Royal Sword and Scepter; that in ſeveral caſes Actions may be brought in defence of a Mans right, even againſt the Crown, and the Judges have pronounced Sentence againſt ſome claims of the King, and ought to do ſo.

Whatever pains Mr. *Hobs* takes to render thoſe precious words of Property unvaluable and inſignificant, we ſee that a better

a better Philoſopher than He, and who underſtood the Rules of Government (having lived under juſt ſuch a Soveraign as Mr. *Hobs* would ſet up) gives his judgment otherwiſe, where he expreſly tells us, that he is (*i*) much deceived that thinks that King is in ſafety, from whom the Subject is not ſafe in what he enjoys; the ſecurity of the one being from the ſtipulation of the ſecurity of the other.

(*i*) *Errat ſi quis tutum ſibi eſſe Regem putat, ubi nihil a Rege tutum eſt. Securitas ſecuritate paciſcenda eſt.*

That in former ages alſo the condition of the Engliſh Subject hath been happier, in enjoying greater ſecurity, as to their Perſons and Eſtates, than the Subjects of Foreign Countries: and that the Engliſh Laws and Government have been very tender of them, appears by what another (*k*) Lord Chancellor writes, who lived in a turbulent age, and was forced into exile with the Prince, eldeſt Son to King *Henry* the Sixth. He in many places, treats of the miſeries of the Peaſants in *France*, and of the generality of the *French* Subjects, too tedious here to relate, and in his free way of Dialogue with the Prince, he divides Kingly Government into that which is Regal and Abſolute, and that which is Political. In which laſt are condeſcenſions of Princes to bound their Prerogative, and this he commends to his Prince, ſaying, (*l*) No Prince can be reputed powerfuller or freer than that Prince, who is not only able to maſter and ſubdue others, but alſo his own oppreſſive and extorting diſpoſition, which he ſaith, a King that governs Politically, can do, and ever doth.

(*k*) *De laudibus Legum Ang. c.* 37.

(*l*) *Quis enim potentior liberiorve eſſe poteſt, quam qui non ſolum alios, ſed ſeipſum ſufficit debellare?* Ib.

Therefore we may look upon all ſuch, as now, or in the late times, have made ſuch terrible outcries, for fear of their Properties being invaded (ſince we find two ſuch great Men in diſtant ages ſo freely and elaborately writing againſt Arbitrarineſs) as men that rather deſign Sedition and Rebellion, by raiſing in the Peoples minds, groundleſs jealouſies and fears, than that there can be any umbrages of ſuch fears in the conſtitution of the Government, eſpecially under ſuch a juſt Prince as we have, who will make the Laws the Rule, by which he will ſquare his Royal Adminiſtration, and hath given ſuch aſſurance of it in his never to be ſufficiently valued Declaration, at his Majeſtie's firſt ſitting in his Council, to the infinite joy of his Subjects of all conditions.

Therefore ſince we have our Properties ſo well ſecured and provided for, by the gracious Grants of our Sovereigns in *Magna Charta*, the Petition of Right, and other Acts; let us thankfully acknowledg this great Bleſſing, and with ſo much more duty and induſtry, endeavour to defend, in our ſeveral capacities, the Royal Prerogatives of our Kings; which as much appertain to them, and in a more tranſcendent way, than our Properties are aſcertained unto us.

For it muſt be owned, that the primary end of all Government, is for the better ordering the People, whereby they may live in accord among themſelves, and follow their ſeveral imployments under the protection of the Soveraign.

Therefore whoever endeavour to disjoynt and diſcompoſe the frame of Government (by the wiſdom of our Anceſtors and long experience, found ſo agreeable to the Engliſh *Genius*) are to be reputed, either ignorant of their own happineſs, or deſigners of as horrid miſchiefs: Whether they be ſuch, as according to Mr. *Hobs*'s Principles, may leſſen the affection and tenderneſs of Princes to their Subjects, or leſſen the duty and obedience of Subjects to their Prince, and make them leſs love the conſtitution of Government they live under; or they be ſuch as would cramp the Sovereign Power, and wrap it in ſoft Ermines and Robes of State, without a Sword or Scepter.

Having thus far treated of Government in general, and of the uſefulneſs of it to mankind: I think it neceſſary to give an account of the ſeveral Governments which have been hitherto uſed in the World; and that I may give a more diſtinct account of them, I have choſen to repreſent them as I find they have been practiſed in the ancienteſt times: and finding ſo many in the laſt age and this ſo zealous for a Commonwealth-Government, and ſome yet bewitched with the notions of it, I think it incumbent on me, to be more copious in the repreſenting of the inconveniences of all other Governments beſides Monarchy, that as far as my reading may afford me helps, I may diſabuſe his Majeſtie's Subjects, and repreſent to them the excellency and beauty of the Engliſh Monarchy, which is the whole ſcope and intendment of this diſcourſe; and I muſt beg pardon, if either in the words of my Authors (whom I ſhall endeavour faithfully to quote) or in my own, I uſe any ſmarter or ſharper expreſſions than they are willing to hear. For I think it much more advantageous to the perſons concerned, that they feel the acrimony of my Ink, and the ſmall punctures of my Pen, than that following ſuch miſchievous Principles of our late Republicans, they ſhould have their bloods tainted, or ſuffer the edge of thoſe ſevere Laws, which are ſteeled againſt Rebels, and think it ſafer for them to be blackned by my Ink, than that their blood ſhould ſtain the Scaffolds.

CHAP.

CHAP. VI.

Of Democracy, and the Inconveniences of it.

ALL Ages have allowed of *Ariſtotle*'s diviſion of Government: where he ſaith (*a*) that the Republic and the public Adminiſtration are the ſame, and this public adminiſtration is the Lord or Sovereign of the City, and that Sovereign is either one, a few, or the multitude, 'Ανάγκη ἢ εἶναι κύριον ταυτὸν· πολίτευμα ἢ ἕνα, ἢ ὀλίγους, ἢ τὸς πολλούς. In Democracy the People is the Prince, and in Oligarchy the few.

(*a*) Ἐπεὶ ἡ πολιτεία μέν ἐς, πολίτευμα σημαίνει ἡ πολιτεία· πολίτευμα δ' ἐστὶ τὸ κύριον τῆς πόλεως. *Polit. l.* 3. *c.* 7.

To this diviſion (*c*) *Tacitus* aſſents, where he ſaith, *Cunctas Nationes, & Urbes, Populus, aut Primores, aut ſinguli regunt.* That either the People, the principal Citizens, or ſingle Perſons govern all Nations and Cities.

(*c*) 4. Annal.

Every one of theſe are again ſubdivided. The Government of one is either a (*d*) King, who rules for the good of his whole Subjects, or a Tyrant, who pretending the Protection of the People againſt the too ſevere Rule of a King, or the States, exerciſeth Arbitrary Rule over all. The few conſtitute an (*e*) Ariſtocracy, wherein a ſelect, and ſmall number of the principal Citizens Rule for the public good; or Oligarchy where the Rich only rule for their particular Profit. As to the Rule of the People, or wherein all the People have by amicable conſent an equal right in the Government, and accord to manage it for the common good of the whole, it is call'd Democracy: If not for the common benefit of Rich and Poor, it is call'd Oclocracy, or the miſ-rule of the Rable. All (*f*) which he includes in that diviſion, that whatever forms of Adminiſtration regard the common benefit, they are regular, and ſuch as are conſentaneous to Juſtice; but whoever having the Adminiſtration, conſult their own Profit only, they are depraved and diſtorted from the right Forms of Government.

(*d*) Καλεῖν ἢ εἰώθαμεν τῆς μὲν μοναρχιῶν τὲς πρὸς τὸ κοινὸν ἀποβλέπτους συμφέρον, βασιλείας. *Polit. l.* 3. *c* 7.

(*e*) Ἀριστοκρατίας μὲν ὅρος, ἀρετὴ· ὀλιγαρχίας ἢ, πλοῦτος· δήμου ἢ, ἐλευθερία. *Polit. li.* 4. *c.* 8.

(*f*) Φανερὸν τοίνυν ὡς ὅσαι μὲν πολιτεῖαι τὸ κοινῇ συμφέρον σκοπεῖσιν, ἂυτη μὲν ὀρθαὶ τυγχάνουσιν ὖσαι καὶ ἁπλῶς δίκαιον· ὅσαι ἢ τὸ σφέτερον μόνον τῆς ἀρχόντων, ἡμαρτημέναι πᾶσαι, καὶ παρεκβάσεις τῆς ὀρθῶν πολιτειῶν.

The Πολιτεία, a mixture of all theſe, or any two of them, is often mentioned by the Philoſopher; but of this I have no preſent occaſion to diſcourſe.

I ſhall begin with Democracy; which is the Clay and Iron Feet of *Nebuchadnezzar*'s Image. It is but one remove from Anarchy, wherein all the People have, or pretend to have equal right to Authority, where all govern and all obey. For the People (ſaith the Philoſopher) is a Monarch or ſimple Government by aggregation of many, being many Lords, not as ſingle Perſons, but as Members of the All; which he thus expreſſeth, (*g*) μόναρχος δὲ ὁ δῆμος γίνεται συνθέτος ἐκ πολλῶν, οἱ δὲ πολλοὶ κύριοι εἰσὶν ἕκαστος καὶ ἀλλὰ πάντες.

(*g*) *Polit. l.* 4. *c.* 4.

Of this ſort of Government the (*h*) Philoſopher makes five Kinds. The firſt when Rich and Poor are equally capable of Government. The ſecond when a ſmall real Eſtate is required

(*h*) Τὸ μηδὲν μᾶλλον ὑπάρχειν τὲς ἀπόρυς καὶ τὲς εὐπόρυς. *Ibid.* Subdiviſions of Democracy.

to capacitate them. A third where all Citizens, not by ſome Qualifications debarred, are admitted; but ſo that the (*i*) Laws govern, or are the Standard. A fourth where only the Inhabitants of the City, not thoſe that live diſperſed in the Villages depending on the City, had ſhare in Government, the Law alſo being the Rule. The fifth when the Multitude rule by majority of Voices, and not the Law; ſo that their temporary Votes were Law.

(*i*) Ἀρχειν ὑπ' ἀνθρώπων ἢ ὑπὸ νόμων.

Concerning the Democracies in Corporations.

We have reſemblance of theſe kinds of Governments in our Corporations, where in the Elections of Magiſtrates, in ſome places all Freemen, in others thoſe only who have Burgage Land, in others a Common-Council ſolely, have Vote, and the whole Body, or ſuch and ſuch parts have Power to make By-laws.

If we had no other Argument againſt Democracy but this, that it is of that narrow capacity that it cannot be adapted to order Regions of large extent, it would be ſufficient to diſcredit it; for we find in thoſe incorporated little Democracies, there are more Factions and diviſions than in the whole large adjoining tracts of Land about them, though the Villages contain a much numerouſer People.

It is rarely found but that in all Votes relating to the public, Combinations are made by Kindreds, Companies, or Factions. The inferior ſort having equal Vote, often out-number the Richer and Wiſer, and ſo buſineſſes are aukwardly or tumultuarily determin'd, and the meaner People muſt either neglect their domeſtic affairs, to attend frequent Conventions, or leave the managery to a ſtirring factious Party, which is (*k*) contrary to the fundamental equality and freedom they labour for. As theſe Corporations were firſt created by the Sovereigns Grace and Favour, for the encreaſe of Trade, and enriching the places, and adminiſtration of Juſtice: ſo while they keep themſelves within the bounds of their Duties, are Loyal to their Prince, and Faithful to the Government, and preſume not by their Pragmaticalneſs to diſpoſe of the Fate of the Empire, or by their factious Elections to make diſturbances; It is very neceſſary they ſhould enjoy all their municipal Priviledges. But ſo many Corporations having of late acted contrary, it is no wonder that the late King, upon ſolid reaſon of State, iſſued out his *Quo Warranto's* againſt them; and in all the new Charters reſerv'd a Power in the Crown of diſplacing the Evil Magiſtrates at pleaſure.

(*k*) Ὅτι δὲ ἐλευθέροι πάντες ὁμοίως ἁπλῶς εἰσι νομίζουσιν. *Polit. l.* 5. *c.* 5.

But to leave this to another place, I ſhall note out of the Philoſopher ſuch Arguments as he uſeth againſt Democracy. As firſt that the common People being the greater number, and the Soveraignty being ſuppoſed to be in the whole complex Body, whatever they approve muſt be eſtabliſh'd as a Right and Law, (*l*) and ſuppoſe they vote a Dividend of the richer Citizens Eſtates among themſelves; though this by the force of their Government be juſt, yet in its own nature it is great Injuſtice

1. Argument againſt Democracy, Injuſtice.

(*l*) *Ubi plebs eſt domina, neceſſe eſt ut quod plurimis viſum ſit, hoc quoque ſit ratum & hoc ſit jus.* Polit. l. 6. c. 2.

to

to deſtroy the rich Man's Propriety, as well as it were for the Rich to do the ſame to the Poor.

2dly. Liberty being the principle of all Democratical Government, it conſiſts in two things, either to live (*m*) licentiouſly, which in *Athens* and other places was very fatal, and as *Demoſthenes*, *Iſocrates*, and *Cicero* complain that under the ſpecious pretence of Liberty, even Anarchy prevail'd. Or Secondly in the free and uncontroulable Power of chuſing their Magiſtrates, and this accaſioned the conteſt of parties for Victory; hence Crowds, Tumults, Routs, Riots, Frays and Quarrells, and after all, Heart-burnings.

2. Againſt the Common Peoples Liberty of Elections.

(*m*) *Pleriſque jucundius eſt licenter vivere quam modeſte.* lb. c. 2.

(*n*) *Plutarch* gives us an account of the manner of ſome Elections for Senators, that certain Perſons being cloſed in a Room where they might hear the peoples Voices, but not ſee the People, One Competitor after another was propoſed, and him who was judged to have moſt Voices, they carried Crowned to the Temples of the Gods, Women and Children following him with Shouts. This (*o*) *Ariſtotle* calls a Childiſh action in ſo grave an affair, it being not fit for any to ſeek Magiſtracy in ſuch a way, that by the judgment of the Multitude only, is thought fit to Rule; but (*p*) he that is worthy, be he willing or unwilling, ſhould have the place. Therefore we obſerve where the King hath the ſole Power of nominating Judges, Sheriffs, Juſtices of Peace, *&c.* though they are of as great advantage to the Peace and order of the Government, as Mayors, Sheriffs, or Common-Council Men of Corporations, there are neither Hubbubs or Quarrels at their Elections, and they are generally better qualified than ſuch as court the peoples Favour. Therefore (*q*) *Laertius* exclaims juſtly that the Common-weal muſt periſh, in which the Nobility conſult, but the People and unskillful common Rabble give Judgment.

(*n*) *In Licurg. Vide Giphanii Com. in c. 7. l. 2. Polit. Ariſt.*

(*o*) Καλά τι τὴν χείρω δὲ παιδιὰν σῆς. *L. 2. Polit. c. 9.*

(*p*) Δεῖ γὰρ ἂν βαλόμενον ἂν μὴ βαλόμενον ἄρχειν τὸν ἄξιον τοῦ ἄρχειν. *Ibid.*

(*q*) *Rempublicam perituram in qua viri Principes conſultant, Populus vero & imperita plebecula decernit.*

3dly. In this Government there is a continual ſpawning of Faction. So it is (*r*) obſerv'd that at *Athens* the Democratical Government moſtly obtain'd, yet in the Attick State there were no leſs than three Factions, according to the tripartite diviſion of the People: *viz.* the *Diacrii*, that inhabited the mountainous Parts, who were for pure Democracy; the *Pediaci*, who inhabited the lower Grounds, and they were for a mixture of Oligarchy; and the *Parulii*, or Inhabitants on the Sea-Coaſts, and thoſe were a mixture of both; which *Ariſtotle* calls the Politick. Hence *Piſiſtratus* appearing an Enemy to the *Pediaci*, made himſelf gracious with the People, and ſo eaſily got the Government. So he inſtanceth in the changes of thoſe of *Mileſia*, by the *Prytania*, which was like a Conſulſhip or Dictatorſhip at *Rome*. So he gives an account of *Dionyſius* feigning himſelf to be wounded by the Nobility, who hated him for his love to the People, raiſed a great Envy and Rage of the People againſt them, and ſo eſtabliſhed himſelf. So *Theagenes* by ſlaying the Cattle of the Nobility, animated the People of *Mægara* to follow him, till by ſuppreſſing the Nobility and Richer,

3. Their Faction.

(*r*) *Giphanii Comment. in lib. 5. c. 5. Polit.*

Richer, he got himſelf to be Maſter of all. The like we may read in (s) *Diodorus Siculus*, that *Agathocles* did at *Syracuſe*. All which Changes were the Iſſues of Factions betwixt the Nobility and Common-people, which is as inſeparable from this ſort of Government, as the Prickle is from the Thiſtle, or the Husk from the Corn.

(s) *Lib.* 13. *c.* 9.

Fourthly, The Philoſopher notes, That in this Government the *Demagogues* were moſt uſed. Theſe indeed were the Bell-wethers of Faction, the Conductors of the Peoples Wills and Affections, by the power of their Popularneſs. The (t) Philoſopher tells us, there was no uſe of them, where the Law commanded; but where Matters were judged by the Decrees of the People onely, they were of uſe, being the Authors that all things might be reduced to the Power of the People, whom they wrought upon by their Suaſives, to place or diſplace Magiſtrates, or to enlarge or circumſcribe their Power. Therefore he ſcarce allows the (u) Name of Government to this kind of Republic, becauſe where the Laws have not Authority, there is no Commonwealth; for that theſe *Demagogues* making the *Mobile* Lord over the Laws, and conſtantly raiſing Factions againſt the Rich, *Civitate ex una duas faciant*, of one City or Society made two: So that in that Conteſt moſtly an Oligarchy prevailed; and by the petulancy of the *Demagogues* (who led the People by Herds, pretending, as it was their Office, (w) that none ſhould injure the People) they exaſperated the Nobility to ſubvert the Government, or having got a powerful Aſcendant, uſurped it themſelves; as the Philoſopher inſtanceth in the Iſlands of *Chios* and *Rhodes*, in the Cities of *Heraclea*, of *Pontus*, in the Colonies of the *Athenians* at *Megaris*; the Nobles being abuſed and baniſhed, righted themſelves by Arms, and obtained the Government; and *Thraſymachus* did the like at *Cuma*.

(t) Τοῦτο δ' γίνεται ὅταν τὰ ψηφίσματα κύρια ᾖ, ἀλλὰ μὴ ὁ νόμος, συμβαίνει δ' τοῦτο διὰ τὰς Δημαγωγούς. *Pol. l.* 4. *c.* 4.

(u) Ὅπου δὲ μὴ νόμοι ἄρχουσιν, οὐκ ἔστι πολιτεία. *Id. l.* 5. *c.* 5.

(w) *Neminem plebem injuria afficere.*

Theſe *Demagogues* among the *Grecians*, the *Ephori* among the *Lacedemonians*, and the *Tribunes of the People* among the *Romans*, are often compared, as Officers of the ſame kind, choſen to ſupport the Peoples Intereſts. The Philoſopher gives us an account how the *Demagogues* comported themſelves at the places before-named; of which number, he ſaith, were *Pericles*, *Cilon*, *Hyperbolus*, *Lycurgus*, *Hyperides*, *Demoſthenes*.

Of the *Ephori*.

Concerning the *Ephori*, (x) *Ariſtotle* ſaith, That among the *Lacedemonians* they had the greateſt Power, and being choſen by the People, it often hapned that very poor men obtained the Office, who by reaſon of their poverty were mercenary, as he inſtanceth in the *Andrici*, where they being corrupted with Money, loſt the City. He further adds, That though theſe were choſen by the ignorant Populace, and often were men very unfit for their Office; yet they had Judgment in Capital matters, and did not judge in Caſes of Death or Ignominy by written Laws, but arbitrarily; ſo that the very Kings of *Sparta* were forced to obſerve, careſs, and reverence them.

(x) *Sæpe valde pauperes accidit eſſe in hoc Magiſtratu, qui propter paupertatem ſunt venales.* Polit. lib. 2. c. 7.

As

As to the *Tribunes* of *Rome*, they cauſed many grievous Troubles about the *Agrarian* Laws. *Sp. Caſſius* being the firſt (according to *Valerius*) that raiſed thoſe Diſputes, and was ſlain by his Father; though *Livy* and *Dionyſius* ſay it was *Licinius Stolo*, and after many years *Q. Flaminius* put the ſame in execution, the Senate being againſt it. So *Gracchus*, *Tiberius*, *Titius*, *&c.* did upon the ſame account raiſe great Commotions. The Tribunes of *Rome*.

This was for the taking the ancient Poſſeſſions from the Rich, and diſtributing them among the Poor. Therefore (*y*) *Cicero* ſaith, It was a pleaſant thing to the People, for that they were thereby ſupported without Labour; but the good Citizens reſiſted it, becauſe it would extinguiſh Induſtry, and exhauſt the Treaſury, and inure the People to Sloth.

(*y*) *Giphan. Comment. in c. 7. lib. 2. Polit.*

From all which, we may conclude, That Democracy in its Conſtitution is onely fitted for ſmall Principalities; and in it neither Induſtry, or worthy Perſons, can have Encouragement: How obnoxious it is to Factions, or muſt have a mixture of other Governments to ſupport it, in being headed by ſome few popular Perſons; or muſt have a ſhadow of Monarchy, in the ruling *Demagogues*, *Ephori*, or *Tribunes*; otherwiſe it cannot ſubſiſt.

This leads me to the Fifth Argument of the Philoſopher againſt Democracy, That it was never found to be of any long continuance: For, (*z*) he ſaith, That all Tyrannical Conſtitutions are Popular: And it is well known, That, of all Governments what is Tyrannical, is the moſt ſhort-lived. Liberty being the End and Scope pretended, according to the Fundamental Conſtitution of Democracy, (*a*) to Obey and Rule by Turns; the ſweetneſs of Command induceth them that have once obtained it, to continue it; and the Slavery of obeying ſuch Fellows and Companions, continually provokes others to caſt off the Yoke: So that from hence Jars and Feuds ſhatter the Government in pieces. Beſides, the unwieldy Body of the People ſeldom continue long in one mind, nor can tranſact things without delegation of Power to ſome few; by all which their inſtability is diſcovered, and the ſhortneſs of their continuance ſhews the feeble and impotent Principles they are founded upon. For where ever it hath had any duration, it hath not been from its intrinſick adapture, but from the mixture of other Forms in their kinds more durable; Democracy being in it ſelf ſuch a Rolling-ground, that nothing ſtable can be built upon it. Democracy leaſt durable.

(*z*) Ἐπὶ δὴ καὶ τὰ τυραννικὰ κατασκευάσματα δημοτικὰ δοκεῖ πάντα. *Polit. lib. 6. c. 4.*

(*a*) *Viciſſim parere & imperare.*

It is not to be denied, that *Ariſtotle* in ſome Caſes allows of Democracy; but it is where the (*b*) Multitudes live by Husbandry, Paſture, or Feeding of Cattel. For theſe being continually employed, have not much publick Buſineſs, nor leiſure to attend the Aſſemblies; it being more pleaſant and profitable for them to mind their private Affairs, than to bear Office where little Profit is to be had. But he likewiſe obſerves, That thoſe that lived upon Tillage and Paſture (being the ancienteſt ſort of Where *Ariſtotle* allows of Democracy.

(*b*) Μετὰ δὲ γεωργικὸν πλῆθος, βέλτιστος δῆμός ἐστιν ὅπου νομεῖς εἰσι καὶ ζῶσιν ἀπὸ βοσκημάτων. *Polit. lib. 6. c. 4.*

of People, before Luxury brought in Handicrafts and Artizans) eaſilier yielded to the Government of a Single Perſon, or Tyranny, or Oligarchy, ſo long as they could enjoy their Country Farms in peace. Whereas thoſe in Cities, conſiſting of Tradeſmen, Artificers, the mercenary Multitude, and ſuch as lead an idle Life, having Leiſure and Curioſity to carry them to the Aſſemblies, were more ſubject to Democracy, or Ariſtocracy, or any Novelty or Change.

The plauſible Pleas for Democracy anſwered.

There are three things which render Democracy moſt taking with the Vulgar. *Firſt*, Pretended impartial Adminiſtration of Juſtice. *Secondly*, The ſpecious, but empty Name of Liberty. *Thirdly*, The ſo much applauded Equality, by which they ſeem to reduce their Civil Conſtitutions to the primary Laws of Nature, which gave to all men Common Right.

(c) *Dudley Digs* of Reſiſtance, *p.* 22. 1. That Juſtice is not ſo impartially adminiſtred.

Concerning the firſt, (ſaith a Judicious (*c*) Author, whoſe Diſcourſe on this Head I ſhall epitomize) Their Hopes that Juſtice ſhould be more equally adminiſtred, are grounded upon this, That though ſome Rivers may be corrupted, yet the Ocean cannot. A man may ſatisfie the Intereſts of ſome few, and corrupt them into favour and reſpect of Perſons; but it is hard to do the ſame with a Multitude: for to buy Juſtice of ſo many, would be no thriving Trade.

But this, though plauſible, is but a very fallacious Argument: For it is found by experience, that ſome few more crafty Citizens, who have gained Credit with the People, order Buſineſs in their cloſe Committees, and ſo undiſcernably lead the Multitude to whatever they call the Publick Good (of which they, having prevailed upon their Affections, are eſteemed the moſt competent Judges) by which any one of the Juncto (for they muſt gratifie each other mutually) is enabled to croſs the Courſe of Law in a Friend's behalf, and to put a ſharper Edge upon the Sword of Juſtice when it ſtrikes an Enemy.

Theſe kind of men, by frothy Eloquence in ſet Speeches, cunningly fitted to the Capacity of the Common People, having got the Art of changing the Peoples Opinion of Juſt and Unjuſt, (for Reaſons are not weighed, where ſuch Numbers hold the Ballance) their Art is to apply their Harangues to that which rules the weaker men, the Affections; and theſe are eaſily convinced, and made the Meaſures of their Judgments, the want of weight in the (*d*) Premiſſes being ſupplied by an extraordinary love to the Concluſion.

(d) *Suadendo docent, non docendo ſuadent.*

The Judgments of Right and Wrong (being not like Mathematical Knowledge) are as various as their Intereſts different, becauſe they concern *Meum* and *Tuum*, wherein Profit is the (*e*) Parent of Equitable and Juſt; and theſe Ruling men, when they have a mind to do a man a prejudice, can eaſily transfer his Buſineſs to the Common Peoples Verdict, where they ſhall be ſure to have their Fleece torn off by the Brambles or Briars, or ſuffer as cruel Death (if they be judged Capital Offenders) as thoſe may be conceived to undergo that are rolled

(e) *Utilitas Juſti prope mater & Æqui eſt.*

routed to death in a ſpiked Barrel. So we find the *Grecian* Emperor *Iſacius Angelus*, and the two *De Witts* were torn in pieces, when expoſed to be worried by the Rabble.

Secondly, as to Liberty; it is ſtrange Men ſhould ſo generally fall in love with a bare ſound, and court a name of freedom, which duly examined, ſignifies nothing. They cannot mean by it a looſeneſs from all Laws; they dare not own ſuch pernicious Licence; the true debate is not, Whether they ſhall admit the Bonds of Laws (for they readily embrace them, being forged and fitted by themſelves) but who ſhall impoſe them? The queſtion is not, Whether (*f*) they ſhould ſerve, but, Whether they ſhould ſerve one or more? and with them it is commonly called Liberty, to ſerve many Maſters.

2. True Liberty is wanting in Democracy.

(*f*) *Non an ſervirent, ſed an ſervirent uni vel pluribus.*

Now if we rightly conſider, the reſtraint of our Freedom is that which is moſt valuable amongſt the benefits of Government. For this it is preſerves Peace among men, by it their hands are tied up from doing injury. Every one, it is true, could wiſh to retain full and abſolute liberty, but not upon condition all others ſhould enjoy the ſame. For that love to it, and delight in it, is overbalanced by the fears, and the ſad conſideration ariſing from the thoughts of others freedom, to make us ſuffer as much as they may be tempted to inflict.

Beſides, where can true Liberty be, where the unconſtant *Mobile* have the diſpenſing of it; who have no clear *Idea* of it, are always catching at the ſhadow, and the ungraſped Cloud, for *Juno*. Their Votes are eaſily corrupted, when a (*g*) *Marius* pours out Buſhels of Corn in the *Forum*, to buy them: They are impelled as we ſee in crowds, firſt one way, then another, ebbing and flowing in their actions, like the unconſtant Ocean; and this they call their Liberty, which rather is their ſervile Bondage, being all this while in the ſhorter or longer Chain of their corrupt affections or weak judgments. For how can we think the common body competent Judges to manage affairs, who beſides inconſtancy and diſorder, do every thing in ſuch a manner as it is very hard to ſeparate Tumults and Multitudes; and amongſt Judges, ſo qualified as they are, it is not enough to give prudent Council, but it muſt likewiſe be fortunate; otherwiſe the judicious giver of it, may probably find a great abridgment of his Liberty, if not worſe.

(*g*) *Plutarc. in Vita Marii.*

Thirdly, Concerning Equality, while they urge it comes nearer to the Law of Nature; by the ſame reaſon they muſt diſſolve Government, ſince it would take away all Magiſtrates, Superiors and Inferiors. Beſides, it is againſt Nature it ſelf, that there ſhould be ſuch Equality; as to inſtance, if in Rewards it had been intended, Nature would have made all men equally deſerving: and Reaſon teacheth us, that ſince we may excel others by Education and Induſtry; greater Encouragements ſhould be allotted in conſideration of the charges of good breeding, and of the extraordinary ſtudies whereby

Concerning Equality.

Men enable themſelves to ſerve the Publick. Beſides, this Equality, though pretended to conſerve, doth in truth deſtroy Unity; for none are ſo quarrelſome, none ſo ſubject to envy as equals: Every one being Judge in his own caſe, will yield nothing to common Juſtice.

To cloſe this Chapter, We may judge of the thriving of popular States, by what we obſerve of Commons, which are always poor and bare of good and wholeſome Graſs, comparatively with Encloſures. If theſe Waſts be taken into one Mans hand, he cauſeth the fertile crop of Thiſtles to be Mowed, ſtubbs up the Shrubs and Brambles, ploughs up the Brakes, trencheth and cultivates the Whole, and encreaſeth the profit four fold; whereas, when it lies in common, every one ſerves his preſent turn of it, overſtocks it, and nothing is bred upon it, but poor Jades and Beaſts of Burthen.

Yea, the greater part of Men in a popular State, being bred up to gain, make Profit the rule of their Actions, entertain but little ſence of Honour, and thereby the State is ſoon corrupted by their low affections: ſo that though ſome may be rich, yet the State can never be glorious.

In the ſtanding Pools of popular Government, from the putrilage and mud, ſpawn ſwarms of Tadpols. The rankneſs of ſuch ſoyl brings ſtore of Tares and Goſs, Docks and Nettles: Here the Henbane, Night-ſhade and Aconite grow too luxuriantly; ſo that the medicinal and fragrant Plants rarely find room or cultivation.

CHAP. VII.

Of the ſeveral Forms of Government in Greece, *before and in* Ariſtotle's *time, and of the* Roman *Commonwealth.*

(a) Ὅτι ἀπάγιον ἦν εὑρεῖν Ἀνδρὰς πολὺ διαφέροντας καὶ ἀρετήν. *Polit. lib.* 3. *c.* 15.

(b) Διὰ τοῦτο ἴσως ἐβασιλεύοντο πρότερον. *Ibid.*

THE Philoſopher obſerves, (*a*) that in remote Ages, when there were fewer Perſons of the ſublimeſt eminence for Valour, Wiſdom, Vertue and publick ſpiritedneſs to protect by their Courage and Conduct, to inſtitute Laws by their Wiſdom, to be a living Law by their juſt dealing and example, to ſtudy the emolument and benefit of the common People, by their good will to them; (*b*) Kingly Government was ſolely uſed. But after that many grew up to be equal in vertue, they endured Kings no longer, but ſetled Commonwealths, and uſed an Ariſtocratical Government, where the eminenteſt in Vertue only governed: but when theſe degenerated, and begun to make profit of their publick places, Oligarchy began, where reſpect was not ſo much had to Vertue, as to Riches and Honours; and theſe growing Tyrannical, the People revolted from them, and ſo Democracy was introduced.

Of

Several kinds of Ariſtocracy.

Of Ariſtocracy the Philoſopher makes four kinds: The *firſt* and beſt conſiſting of men abſolutely (*c*) good and vertuous, not in ſuppoſition only. The *ſecond*, where reſpect was not only had to Vertue, but alſo to Riches. The *third*, where, beſides Vertue, alſo Reſpect was had to the Peoples Liberty, as in *Lacedæmonia*, where the *Ephori* were introduced. The *fourth*, where Reſpect was had to Vertue, Riches, and the Peoples liberty, as at *Carthage*.

(*c*) Ἐκ τῆς ἀεὶ ἐσομένων ἁπλῶς καὶ ἀρετὴν πολιτείαν, καὶ μὴ πρὸς τοῦτό τινα ἀγαθῶν ἀνδρῶν. *Polit. lib.* 4. *c.* 7.

(*d*) *Polit. lib.* 4. *c.* 5. Four kinds of Oligarchy.

The ſame Philoſopher (*d*) makes four kinds of Oligarchy. The *firſt*, wherein thoſe of the largeſt proportion of Eſtate, according to a certain limit, were capable of Authority, and all under that degree were excluded; ſo that whoever had acquired ſuch a proportion of Eſtate, was capable of Rule, without any other qualification. The *ſecond* was, when the *Cenſus* was leſs, whereby the Government was in more hands, and thoſe had power to chuſe others in the room of ſuch as deceaſed. As it is uſual in our Common-councils. In the *third* kind great Riches were required, ſo that there were fewer Governours, and they had greater Authority, and their Children ſucceeded them. The laſt kind was, wherein the greateſt Eſtates only were capacitated: But the Governours were not tied to the obſervance of Laws, but ruled according to their own wills, as they agreed among themſelves.

Of the Government called Πολιτεία.

(*e*) *Ariſt. Polit. lib.* 4: *c.* 8.

That form of Government which the (*e*) Philoſopher calls πολιτεία, ſeems rather an *Idea* of Government, than that ever (as it is deſcribed) it was put in practice. For he inſtanceth in no State but that of *Sparta*, that had any reſemblance of it, and the *Thurians* which degenerated into Democracy. However I ſhall give ſuch an account as I find of it in him, or in ſuch Commentators as I have by me, eſpecially in *Giphanius*: *Firſt*, He makes it a (*f*) commixture of Democracy and Oligarchy, wherein the Poor and Rich had an equal capacity to the Office and Adminiſtration of Government, and calls it properly a Republic, becauſe thoſe Governments which incline to Democracy, were ſo called, becauſe they ſeemed moſt fitted for the Peoples good; but thoſe which inclined more to Oligarchy, were uſed to be ſtiled Ariſtocracies, (*g*) becauſe thoſe that are rich are commonly Perſons of good education, and ennobled, which things he ſaith appertain to Vertue. So that there being three neceſſary ingredients or terms in a Commonwealth, Vertue, Riches and Liberty, this πολιτεία directly includes the two laſt; and the firſt alſo is included, becauſe amongſt (*h*) moſt, the Rich are reputed amongſt the beſt deſerving. So he makes this kind of Government to be different from Democracy and Oligarchy, becauſe mixed of both; ſo that in one particular he ſhows the combinations of theſe two in Polity, by ſetting a mulct upon the Rich that abſented themſelves from the adminiſtration of the Government, and reward upon the Poor that ſhould attend it, which in Oligarchy had no place.

(*f*) Ἔστι δὲ πολιτεία ὡς ἁπλῶς εἰπεῖν, μίξις ὀλιγαρχίας καὶ δημοκρατίας. *Ibid.*

(*g*) Διὰ τὸ μᾶλλον ἀσχολεῖσθαι παιδείαν καὶ εὐγένειαν τοῖς εὐπορωτέροις. *Polit. lib.* 4. *c.* 8.

(*h*) Παρὰ τοῖς πλείστοις δοκοῦσι τῆς καλῶν κἀγαθῶν δοκοῦσι κατέχειν χάριν. *Ibid.*

(i) *Lib.* 4. *Polit. c.* 13. Another ſort of Commixture (*i*) he makes, that whereas in Oligarchy, there is only reſpect had to great wealth, and in Democracy, no reſpect at all had to it; This Polity is mixed of a middle ſort of Riches, and ſuch men he judgeth the beſt tempered, as not covetous and greedy as the Poor, nor being wealthy enough to do miſchief, but contenting themſelves with their Mediocrity.

A third kind of their mixture he makes, that whereas in Oligarchy, the Magiſtrates are choſen by Riches and Suffrage, and in Democracy without theſe; the Compoſition is, That the Election be by Suffrage only, without reſpect had to Wealth.

As to the *Roman* Commonwealth; The Soveraignty, after the expulſion of Kings, conſiſted in the Senate, the Conſuls and Tribunes of the People, all of them ſeeming checks upon others; but at ſome times one part, eſpecially the *Patricii* or the *Plebs*, aſſumed or exerciſed more power, one than the other, according to the prevalency of either party.

Of the *Roman* Senate. As to the Senate of *Rome*, *Romulus* elected an Hundred out of the *Patricii*, to be his Council, to aſſiſt him in determining matters concerning the Commonweal. *Tarquinus Priſcus* added an Hundred more, (*k*) and *Brutus*, according to moſt Authors, another Hundred; and though at firſt, only the *Patricii* were choſen, yet after, the Commoners alſo were choſen, called *Senatores minorum Gentium*.

(k) *Alexand. ab Alex. Genialium Dierum, lib.* 9. *c.* 2.

Theſe had the conſulting part under their care, were the great Judicature, to which laſt Appeals were made, and by their ratifying of things, added the force of the *Senatus conſultum*, by which they decreed honours and puniſhments.

Concerning the Conſuls, after the expulſion of *Tarquinius Superbus*, the Government of the City, which was before in (*l*) one (the King) was now divided betwixt two, who at firſt were called *Prætores quod præirent Populo*, and not long after *Conſules* from conſulting for the People. Theſe at firſt, had the executive parts of moſt things relating to the Government, under their care; but after, by the conſent of the Senate, they choſe two Cenſors, who took an account, not only of the number and riches of the People, but had power to enquire into every mans life.

(l) *Roſini Antiq. Rom. lib.* 7. *c.* 9.

(m) *Pighius.* They alſo for adminiſtring Juſtice, created two Officers, the *Prætor Urbanus* for City-affairs, and *Peregrinus* for Foreign affairs, like our *Mayors*. Theſe Conſuls had the Government of the Military Force, and other Juriſdictions too long to be here inſerted. They were at firſt but two for a year, after four or more by removable reſignation or death. The People got one of the Conſuls to be choſen of the *Plebeians*.

Of the Tribunes of the People. Concerning the Tribunes of the People, we may note that the Commonalty, finding (*n*) themſelves oppreſſed by the Wealthier ſort, departed unto the *Aventine* Mount, threatning the

(n) *Roſini Epitome rerum Rom. lib.* 7. *c.* 25.

the Nobility they would depart the City, and never again adventure themſelves in War for the defence thereof, unleſs they had ſome releaſe and eaſment, and had certain Magiſtrates choſen, who ſhould be *Sacroſancti*: that is, ſuch as might not be hurt nor violently uſed, not ſo much as in words: and thoſe Magiſtrates ſhould be the Protectors of the Commonalty, who being at firſt choſen from the military *Tribunes*, and they having the name of *Tribunes* from the diſtinction of the *Romans* into *Tribes*; that they might be diſtinguiſhed from the military *Tribunes*, were called the *Tribunes* of the People. At (*o*) firſt they were only two, but after encreaſed to the number of ten. They had power to hinder any Proceedings in the Senate, which they thought might prove prejudicial to the Commons. At (*p*) firſt they had not Authority to enact any new Decrees, as afterwards by abuſing their Authority, and by Connivance they uſurped; for in old time they ſate (*q*) without the door of the Senate, whither whatſoever was determin'd within the Senate, was ſent to them to be peruſed, and if they approved it, they ſubſcribed a *Roman* T for *Tribunus*.

(*o*) *Pighius Tyrannofugio.*

(*p*) *Stadius in Florum, lib.* 3. *c.*2. *Eorum Autoritas magis in intercedendo, quam jubendo.*

(*q*) *Pighius ut ſupra.*

When any new Laws were to be propoſed, the (*r*) *Prætors*, Conſuls, Dictators, *Interrex*, *Decemviri*, military *Tribunes*, *Triumviri*, and *Tribunes* of the People only had liberty to propoſe them, and they were expoſed to view of the People for three Market days, and after the Magiſtrates aſſembled the People to hear the Law, which by the Proponent was pleaded for by an Oration, and ſeconded by others, and if not liked, it was oppoſed in the ſame manner. The People being aſſembled according to the triple diſtinction of them into Tribes, and the diviſion of each Tribe into ten *Curiæ*, or Pariſhes, and the Centuries or Hundreds, the Aſſemblies were called *Comitia*, *Tributa Centuriata*, or *Curiata*. Now into a Pitcher were put the names of theſe ſeveral diviſions, and that Tribe or Centuries Name which was firſt drawn, was called *Tribus*, *vel Centuria Prærogativa*; becauſe they were firſt asked their Voices, and commonly the vote of that was followed by the reſt, eſpecially in choice of Conſuls: the *Curia* upon which the firſt Lot did fall, was called *Principium*. (*s*) Now while the People were buſy in their Lottery, if any *Tribune* of the Commons ſhould *intercidere*, or forbid the Proceeding, he might be heard, and the whole Aſſembly was for that time diſmiſſed; or if the Conſuls commanded ſupplications to be offered up in behalf of the Emperor, or if it fell on ſome forbidding of Feaſts, or if any were ſeized with the Falling-ſickneſs, or the Soothſayers found any unlucky Signs: upon any of theſe the Aſſembly was diſſolved; otherwiſe the Law that was approved by the People, was recorded, being graven (*t*) in Braſs, and put in the Treaſure-houſe. That which was determined in the (*u*) Pariſh-Aſſemblies was called *Lex Curiata*, that in the Centuries, *Lex Centuriata*, that which was in the Aſſembly of the Tribes was not called a Law, but *Plebiſcitum*.

(*r*) *Godwyn's Roman* Antiqu. *lib.*3. *ſect.*1.

(*s*) *Hubert in Lib.* 1. *Cicer. Epiſt. Serm.* 2.

(*t*) *Tacit. Annal.* 11.

(*u*) *Sigonius de Jure, lib.* 3. *cap.* 1.

CHAP.

CHAP. VIII.

The Inconveniences of all kinds of Republic Governments.

I Shall now conſider all theſe forms of Commonwealths in groſs, and hope to ſatisfy the ingenuous and unbiaſs'd Reader, That if a People were in a capacity to chuſe their own Government, they ſhould have no reaſon to chuſe a Commonwealth, rather than Kingly Government: much leſs that they ſhould endeavour to innovate or introduce it, where already ſo Geometrically compoſed as it is in *England*, both for the glory and benefit of the King and People.

(*a*) *Nalſon*'s Common Intereſt, *c.* 3. The Benefits deſigned in all Societies.

It is Judiciouſly noted by a late (*a*) Learned Writer, That the happineſs of all Societies principally conſiſts in the ſecuring domeſtic Peace, or protection from foreign Enemies, ſecuring to every Member of the Society their particular right and property, free from encroachment and oppreſſion; or in the equal diſtribution of Juſtice to all, according to their proportion of Reward or Puniſhment. Through all which heads I ſhall endeavour to ſhew that in Commonwealths theſe Particulars cannot or have not ſo effectually been ſecured, as in a rightly conſtituted Monarchy.

1. Securing Domeſtick Peace.

Firſt as to the ſecuring domeſtick Peace, the very conſtitutions of Commonwealths, requiring many Magiſtrates of equal Authority, ſubject to the Political Diſeaſes of State; *Viz.* Covetouſneſs, Ambition, Oppreſſion and Faction, and all the Concomitants of theſe, make them more ſubject to Inteſtine Diſcords than Monarchy can be.

Ibid. Covetouſneſs in Commonwealthsmen cauſes Diſcords.

Firſt, It muſt be conſidered that in all Commonwealth Governments, there is a neceſſity of change of Perſons, either annually choſen, or to be for ſome few Years duration; and all ſuch muſt at the ſame time intend the intereſts of their private affairs ſeparate from the public: and there being moſt tempting Probabilities of a private and particular advantage to be made of all publick Truſt, where there is Power; it is a perpetual Spur to ambitious and ſelfiſh Spirits, to court ſuch Employments which are like to be ſerviceable to their Honour or private Fortunes; and the (*b*) beſt Men being reſtrained by their modeſty and paucity, thoſe that have deſigns by direct or indirect ways, wind themſelves into thoſe places, and by the rotation knowing they ſhall not long enjoy them, they will improve the time in enriching themſelves, and connive at others that do ſo, leſt they themſelves ſhould be called to an account: every ones rapaciouſneſs being likelier to be ſo much the eagerer, becauſe he knows it may not come again to his turn to have the Quarry to prey upon. Therefore the common Intereſt (if it be regarded) muſt be only as it is ſubſervient to theſe By-ends.

(*b*) Οἱ καλ' ἀρετὴν διαφέροντες ὀ ποιοῦσι φάσιν· ὀλίγοι γὰρ χίρονος) πρὸς πολλούς. *Polit. lib.* 5. *c.* 4.

Thus

Thus in our late Republic, the great Buſineſs (even of the zealouſeſt Pretenders to the Public) was to enrich themſelves and their Confederates, as was apparent by the conſiderable Eſtates they had, even after they had been forced to diſgorge thoſe fat Portions of Crown, Biſhops, Dean, and Chapter, and Cathedral Lands.

By this obſervation we may conclude that the conſtituent parts of this Government, being ever like to be ſuch; the miſerable People muſt be continually ſpunged, to feed ſo many greedy Worms, and when the Prey grows ſcarce, theſe Blood-Hounds will be ſure to fight who ſhall get the beſt Share.

Beſides, there muſt be continual Heart-Burnings and Part-making, when thoſe that are endowed with (*c*) great Souls, or are equal in Fortitude, or Vertue, have not the eminenteſt command (at leaſt as they judg) according to their Worth and Merits. By which means ſome will be carrying things by Arbitrary Power over their Equals, as the Philoſopher inſtanceth in *Pauſanius* in *Lacedæmon*, *Hanno* at *Carthage*, *Lyſander*, and *Eniadas*, and the *Partheniæ*, who judging themſelves equal with thoſe that had rule, and being by them ſlighted and branded with the title of Baſtards, conſpired to have ſlain the Senate and Optimacy. Factions among them.

(*c*) ἢ τὸ πλῆθος τῆς προεγνωσμένον ὡς ὅμοιον καὶ ἀξιοῦν. *Polit. l.* 5. *c.* 7.

To inſtance in all the Factions in Commonwealths, were to write a voluminous Hiſtory. I ſhall touch upon ſome, and ſhow that the cauſes either given or taken will always be the ſame in theſe kinds of Government; the very Conſtitution of them, by the purity and equality of Dignity and Power, naturally producing Jealouſies, Animoſities and Æmulations: whereas the (*d*) Philoſopher well notes, that many may diſagree among themſelves, but one cannot. The difference of Judgment as to Conduct and Managery among multitudes of Equals embarraſſing Debates, the Reſult muſt be according to the prevailing of ſome Faction: Every one judging moſt advantageouſly of his own council and advice; and thoſe whoſe Councils are rejected, will look upon it as a Diminution of that eſteem for Wiſdom and Policy, which they think they deſerve, and theſe Diſcontents will occaſion making of Parties, entring into Confederacies, and Combinations of Faction, and frequently end in popular Inſurrections, Tumults, and Diſorders, to which Republics, by their make are thus propenſe.

(*d*) Οἱ μὲν σωτάζειν, ὁ δὲ εἷς ἀσταίας. *Polit. l.* 3. *c.* 15.

Since therefore they are the ſeminaries of Faction, we can expect no wholeſome Fruit from ſuch corrupt Seed; for all factions endeavour to ſuppreſs their Oppoſites, and thoſe heats, underminings and jarrs, are not confined to their Senate-houſe, but are diſperſed, according to the places of their Reſidence, Eſtates, Marriages or Alliances, through the whole Dominions, every one ſtrengthening his Intereſt what he can; and the nature of Mankind being to ſide with one or other, if the Parties be Proud, Ambitious, Covetous, or Imperious, they will be moſt abſolute and arbitrary in ſuch places where they

diseases

they can prevail; and if Persons admitted to Copartnership of Rule, be not of their own Nature guilty of such Vices, the desires of every one to be reputed the wisest, and to gain the leading of a Party, or obtain the supream Authority, are apt to taint such, who being exalted, not born to Greatness, would have all to judg that such Promotions are the pure-pute effects of their Merits, and whoever sets that high value upon himself, cannot escape the danger of unsupportable Pride, as well as Vanity, which will hurry them on to over-bear all Opposition.

The *Athenian* Changes and Factions.

I shall now proceed to some few Instances of the Ruins brought upon many by Faction. At *Athens*, after the death of *Codrus*, the race of their Hereditary Kings ceased, and there succeeded Kings for term of Life, like as the Elective Kings of *Poland*. After twelve such Kings ending in *Alcmenon*, they constituted Decennial Kings, or *Archontes*, whereof *Erixias* was the last; and then they passed to annual Magistrates, like Lord Mayors, or Burgo-Masters: and all these changes were by the prevalence of one Faction after another. *Solon* was one of these yearly Magistrates, and he corupiled their Laws, such as the *Romans* in after-times sent to peruse, and reduced into twelve Tables. These were framed unto the Practice and maintenance of popular Government, which in *Solon's* own Lifetime were violated, and almost extinguished: for *Pisistratus* the Son of *Hippocrates*, finding the Citizens distracted betwixt two Factions, whereof *Megacles* and *Lycurgus* (two Citizens of noble Families) were become the heads, took occasion by their contention and Insolence, to raise a third Faction more powerfull, because more plausible; for that he seemed a Protector of the Citizens in general: and having once got love and credit, he wounded himself, and feigned that by Malice of his Enemies, he had like to have been slain for his love to the good Citizens, and so procured a Guard, and made himself Lord: but he was soon driven out by *Megacles* and *Lycurgus*, and then the Æmulation began afresh betwixt the former Factions; and *Megacles* finding himself too weak, called in *Pisistratus*, but he was once more expelled, and was restored a third time, and governed *Athens* seventeen Years, and his Son *Hippias* succeeded him, who was at last forced to fly to *Darius*.

Concerning the 30 Tyrants of *Athens*.

I shall under this Head only touch upon one example more in *Athens*. After the *Lacedæmonians* had subverted the Walls of *Athens*, thirty Men were appointed by the People to compile a Body of their Laws, and these had supream Authority, and were made Judges; and in cases wherein the Laws were defective, had power to give Sentence according to their own pleasures. At first they exercised their Authority upon lewd and wicked Persons, such as were odious to the People. But afterwards all sorts of People (under the notion of Perturbers of the Peace) were Fined, Imprisoned, or put to Death, according as they among themselves judged fit.

To

To ſtrengthen their own Tyranny, they aſſociated three Thouſand Citizens to them, the reſt they diſarmed, exerciſing the greateſt Tyranny imaginable upon them, and agreed amongſt themſelves that every one ſhould name one, whoſe Goods ſhould be ſeized on, and the owner put to Death; upon which *Theramenes*, one of the Thirty diſcovering his deteſtation at thoſe proceedings (though there had been a Law that none of the three Thouſand ſhould ſuffer Death at the appointment of the Thirty, but have a legal Tryal) yet *Critias*, one of theſe thirty Tyrants, ordered *Theramenes*'s name to be blotted out of the Number. *Theramenes* urged the ill conſequence to the reſt of the Thirty, if without any juſt reaſon the names of any might be expunged by the overruling of one or more of the number; but every one thought fit rather to preſerve his own Life by Silence, than preſently to draw upon himſelf the danger which as yet he thought concerned him little, and perhaps would never come near him: ſo the Tyrants interpreting Silence, Conſent; he was forthwith condemned, and compelled to drink Poyſon.

Theſe Proceedings cauſed many Citizens to fly, who under the conduct of *Thraſybulus* made head againſt them, and at laſt the *Lacedemonians* removed the thirty Tyrants to *Sparta*; and the Citizens roſe againſt the Captains of the tyrannical Faction, and ſlew them as they were coming to a Parley, and ſo put an end to that worſt of Miſeries they had undergone, ſince thoſe thirty were conſtituted. In which ſad Hiſtory we may obſerve, that theſe Tyrants were elected by the People, and at laſt after their outragious cruelties, were by the People deſtroyed: and no doubt they at firſt appeared ſuch to the People as they might confide in for Adminiſtration of Impartial Juſtice; into which belief they had cunningly bewitched them; and they were by the ſame Hands that raiſed them, demoliſhed. For as Sir (e) *W. Raleigh* well obſerves in popular States, when any miſchief happens, the People take revenge on the Commanders; and where any Judgment is left to them (as in popular States, they will be always puſhing on for a Share) there will be very diſmal and indirect Proceedings: and when their Judgment proves ſound, it is by chance rather than otherwiſe.

(e) Hiſtory, *p.* 278.

In *Carthage*, Factious and diſorderly popular Government was as fatal as in any other place. *Hanno* and *Bomilcar* were two famous Captains, but the heads of two ſeveral Factions, and ſuch Enemies to one another, that when they were choſen Generals againſt *Agathocles*, *Bomilcar* ſuffered *Hanno* to be cut in pieces rather than he would aſſiſt him. So *Hanno* and *Amilcar* being joined againſt the Mercenaries, *Amilcar* could perform nothing by reaſon of the envy of *Hanno*, till for the publick Service ſake they were made Friends.

Of Factions in *Carthage*.

The *Barchine* Family (of which *Hannibal* was the third in Succeſſion that was General of the *Carthaginians*) had the greateſt Intereſt both in the Senate, and among the People for

ſome time; none being able either to tax his, or his Families Vertue, or to perform the like ſervice for the Commonweal. Yet we find, that when *Hannibal* and his Brother *Mago*, had ſo far overrun *Italy*, that nothing but the ſupply of Men and Money, to compleat the Conqueſt, was wanting; yet the Faction of *Hanno* wrought upon the people (not by detracting from the Valour and Conduct of *Hannibal* and the Family, but by the general reprehenſion of the War) that when *Mago* was ſent over for Recruits, he had wrought ſo on the covetouſneſs of thoſe that were loth to lay out their Money before extreme neceſſity required it, and had more feeling of their own preſent commodity, than ſence of the publick need; that he got little encouragement: and when the matter being propoſed to the People, they yielded to a ſupply, yet *Hanno* and his Party gave ſo many impediments to the Execution, ſuggeſting the danger, that if *Hannibal* and his Brother conquered, he would make himſelf King, that by that means, he cunningly undermined that brave man, and brought at laſt ruin upon the whole Commonwealth. When *Scipio* (without the compliance of the Senate, but with the concurrence of the People) tranſlated the War to *Africk*, ſo that the *Carthaginians* were forced to recal *Hannibal*, who not able to maſter *Scipio*, the whole Commonwealth was ſubjected to the *Romans*, of whoſe Factions and civil Diſcords, I ſhall now give a ſhort account.

When the Truce betwixt the *Romans* and *Veientes* was concluded for Forty years, there aroſe a Sedition about the *Lex Agraria*, which was appeaſed by the raiſing a War againſt the *Sabines*, *Æqui* and *Volſci*: Such new Wars being the only extinguiſhers of the Domeſtick Fires, which conſtantly, in peaceable times, were kindled betwixt the Optimacy, or the *Patricii* and the *Plebs*.

(*f*) *Livius, lib.* 2. *An. V.C.* 281.

At the inſtigation of ſome deſperate Bankrupts (who thought themſelves wrongfully oppreſſed by the Senate and Conſuls) the People made a dangerous uproar in the Holy Mount, 'till *Menenius Agrippa*, by the diſcreet alluſion of the inconvenience of the diſcord betwixt the Head and the Belly, brought them to ſome reconciliation, on condition they might have ſome new Magiſtrates erected, to whom they might appeal in matters of variance betwixt them and the Conſuls; which were therefore called the Tribunes of the People.

After this the ten (*g*) Men, called the *Decemvirate*, with *Appius Claudius*, ruled all, and wreſted the power from the Senate and Conſuls; but he and they were forced to reſign to the Senate again, after ſome few years Tyranny.

(*g*) *Idem, lib.* 3. *An. V.C.* 297.

(*h*) *Inter patres plebemque certamina exarſere, modo turbulenti Tribuni, modo Conſules prævalidi, & in Urbe ac Foro tentamenta Civilium bellorum, mox e plebe infima C. Marius & nobilium ſæviſſimus L. Sylla.*

Before the Siege of the *Veii*, they changed the Government of Conſuls to Military Tribunes, who uſurped the power for almoſt Seventy years; ſo as by civil (*h*) differences there was great interruption, that one while Conſuls ruled, another while there was an Anarchy, then the Tribunes were reſtored,

and

and after many years the conſular Authority was eſtabliſhed, but ſo as one of the Conſuls ſhould be a *Plebeian.*

Concerning the Seditions by *Tiberius Gracchus* and *Caius* his Brother, and *Apuleius Saturninus* ſuppreſſed by *Marius*, of *Livius Druſus* by *Philippus*, and that betwixt *Marius* and *Cinna* againſt *Sylla*, and the (*i*) calamities the People underwent in thoſe Tragical Factions, betwixt *Pompey* and *Cæſar*, I muſt refer the curious Reader to *Florus* and the *Roman Hiſtorians.* Therefore (*k*) *Tacitus* makes a moſt true remark, That ſince in the command of many, it is unavoidable, but that all things will be diſturbed by Factions; therefore for peace ſake, it is behoveful that the Power be devolved on one: as likewiſe in (*l*) another place, That there is no other remedy, where diſagreements are in ones Country, but that one ſhould govern.

(*i*) *Victam armis libertatem in Dominationem verterunt.* Tacit. 2. Hiſtor. lib. 3. c. 14, 15, 16.

(*k*) *Cum diſſentionibus omnia conturbari in multorum Imperiis neceſſe eſt. Pacis intereſt omnium poteſtatem conferre ad unum.*

(*l*) *Diſcordanti ſæpe Patriæ non aliud remedium fuiſſe, quam ſi ab uno regeretur.* 1. Annal.

Therefore before the Government was changed at *Rome* unto that of Emperors, They had no other remedy in great Exigents, than to chuſe a Dictator, whether it were in imminent danger from Enemies abroad, or Factions at home. So *Appius Claudius* at a pinch cries, *Agedum, Dictatorem, a quo nulla provocatio, creemus*, Let us chooſe a Dictator from whom is no Appeal. For his power was ſuch, as (*m*) *Livy* tells us, That he had the Power of Death, and againſt whoſe Authority, neither the Tribunes of the People, nor the People themſelves durſt lift up their eyes or gape to oppoſe. By the chuſing of this Officer, with ſuch abſolute Power, we may infer how neceſſary it was in a Commonwealth (to avoid the diverſity of opinions, the factions of Parties, and the evil conſequences that would reſult from them) to fix the Power in one, who might be a temporary Monarch: by which it is ſufficiently evident what deference is to be paid to Monarchy; it being no ſmall addition to the power of *Julius Cæſar*, that he was inveſted in the perpetual Dictatorſhip, That being an authority known, and as far as I can judge, gave him a fuller and vaſter extent of Power, than the Title of *Imperator*, which implied no more than General of an Army.

Livius, lib. 2. Neceſſity of chuſing a Dictator.

(*m*) *Jus vitæ penes unum illum eſſe, nec adverſus Dictatoriam vim, aut Tribunus Plebis, aut ipſa Plebs attollere oculos, aut hiſcere audebat.* Lib. 6.

That all Republics are ſubject to Factions, appears farther in the Philoſopher in ſeveral particulars, as in the uſe though not the name of *Demagogues*, as well in them, (*n*) who were the Peoples Flatterers, as in *Democracy*, and that their Magiſtrates were choſen by tumultuous Elections, as he particularly inſtanceth at *Elis*, where the Senatorſhip being for life, by reaſon of the longer duration of the Honor and Profit, the conteſts were ſo much the more violent.

(*n*) Ἔστι γὰρ ὁ Δημαγωγὸς τοῦ δήμου κόλαξ. *Polit. lib.* 5. *c.* 11. *Heinſii.*

(*o*) Ἐν μὲν πολέμῳ διὰ τὴν πρὸς τὸν δῆμον ἀπιστίαν, στρατώτας ἀναγκαζομένων χρῆσθαι —— Ἐν δὲ τῇ εἰρήνῃ διὰ τὴν ἀπιστίαν τὴν πρὸς ἀλλήλους ἐσχυρίζοντο τὴν φυλακὴν στρατώτας καὶ ἄρχοντι μισθῷ ὃς ἐνίοτε γίνεται καὶ κύριος ἀμφοτέρων. *Polit. l.* 5. *c.* 6.

But above all the inconveniences of theſe Commonwealths (which was bottomed upon the ſecuring of one Faction againſt another) he (*o*) reckons the keeping up of a ſtanding Army in War and Peace, which, he ſaith, was by reaſon of the diſtruſt among themſelves, whereby they were obliged to commit themſelves to the cuſtody of Soldiers, and the Comman-

der being by that means impowered to be a Judge or Arbiter betwixt them, made himſelf Lord of both, as he inſtanceth in the time of the Government of the Family of the *Alvidi* at *Lariſſa*, and at *Samos* and *Abydus*, and in *Timophanes* at *Corinth*. For this reaſon, the *Romans* fearing *Camillus*, baniſhed him: So *Julius Cæſar*, for ten years, having the command in *Gaul*, was able to maſter the Senate with more eaſe.

If we had never heard of any ſuch thing in the World before, yet we had the too late calamitous experience of it, in our late Republican Government; which was no longer able to ſubſiſt, but while it had an Army (maintained at the charge of the enſlaved People) to ſecure them: yet they falling into Factions themſelves, their Army did ſo likewiſe, and the Houſes and Army at laſt came to have ſeveral Intereſts, and to have competitions for Sovereignty (which any wiſe man might have foreſeen) and at laſt, the Army being divided, the happy Reſtauration of the King was thereby much facilitated.

That a Commonwealth cannot ſo well defend it ſelf againſt a Foreign Enemy.

Having thus cleared, I hope, the point, That a Commonwealth Government is leſs conducible than Monarchy, to prevent inteſtine Diſcords; I ſhall now proceed to diſcourſe how difficult it is in this Form alſo, to defend their Subjects from Foreign Invaſions, eſpecially without the conſtituting of Dictators or Generals, with unſociable Power, which is in effect, a temporary Monarchy.

In all Wars nothing is more requiſite than Unity of Councils, and Secrecy in the conduct of Affairs, which is moſt difficult to be obtained, where many are at the Helm. Beſides, among ſo many different judgments (as there muſt be in ſuch a Body, before they can arrive at a Reſolution) favourable opportunities for Action, are by protractions irrecoverably loſt; and the fear they have of impowering their General too much (leſt he ſhould eſtabliſh himſelf in the Sovereignty) makes them limit and reſtrain him, ſo as he cannot take advantages, when offered: and thereby Commanders are cautelous and wary not to offend ſo many Maſters; whereby time is loſt in procuring new Inſtructions, and ſometimes for the reaſons aforeſaid more Generals than one are appointed, that one may be a check to the other: So (*p*) *Herodotus* obſerves, That the difference of Generals, when in equal command, hath loſt victories, as at *Iſthmus*, by the diſſention betwixt *Themiſtocles* and *Euribias* the *Perſians* had almoſt maſtered all: So *Thucydides* notes, that ſo long as *Pericles*, by his own judgment and will, governed the Affairs of *Athens*, ſo long all things were proſperous; but after by the Factions of evil-diſpoſed perſons, he was oppoſed, he ſped as ill.

(*p*) *Lib.* 8.

Beſides, in the numerous Maſters in a Commonwealth, the ſaving of every ones own Stake, will be the principle of their (*q*) care and ſedulity; So that if a Foreign Power give them a defeat, they will be eaſily induced to follow (as they of late uſed to call it) Providence in all Revolutions; and if they can obtain any aſſurance of enjoying their private Laws,

(*q*) *Nalſon's* Common Intereſt, *c.* 3.

or

or obtaining an higher pitch of greatneſs, under another power, they will not eaſily reſiſt the temptation of betraying the Liberty of their Country; and ſo quitting the leaking Veſſel of the Commonwealth, will either fairly tack about in their private Shalop, and ſtand in with the next Shore of ſafety, or by ſtriking Sail, come under the Lee of the Conqueror, or ſtrike into the aſſiſtance of him, in hope to have a ſhare of the Plunder.

In Miſcarriages, the Authors difficultly known.

Beſides, in the Multitude of Councellors (if there happen any notable miſcarriages of State) there is ſafety to themſelves. It being difficult to fix it upon any one ſingle perſon, every one ſhrowding himſelf in the complex Act of the whole: So that though they ſingly put in for the glory of proſperous Atchievements; yet in unfortunate or unlucky Councils and Actions, they skreen themſelves under the majority of Votes; which becauſe they always may do, it muſt neceſſarily make ſome more Supine, and leſs Vigilant over the Publick. It is in theſe muddy Pools of Commonwealths, the devouring Otters may ſafelier lodg; here the gliding ſlippery Eel finds Covert, the Horſeleeches abound, the Water-rats lodg in their Banks, and the Uliginous parts ſwarm with Frogs and Toads, every one preying upon other. Here the Cockatrice breeds, and the fiery Baſilisks, as well as Lizards and Newts. *Africk* is not more fruitful of Monſters than they of Harpyes. This is the common Sewer that receives all the ſludg and filth of People; the hopes and expectation of Liberty alluring all.

Great Injuſtice and Oppreſſion in Commonwealths.

As to the Peoples living freer from oppreſſion in a Republic, than under Monarchy, it is evidently found the contrary; as I ſhall make it appear in the Chapter of Monarchy: And there is ſtrong reaſon for it, ſince in this form, theſe Lords the States, will be continually ſtriving to enlarge, not only their Power but their Riches; and the more they increaſe in either, the more muſt the common and middle ranked Men be oppreſſed and exhauſted.

It hath been from the inſolence, oppreſſing and engroſſing of Eſtates by the Governing Party, that the *Thurians* changed their (*p*) Ariſtocracy to Democracy, that the *Meſſeniac* War was occaſioned, that the Revolutions were at *Lygdamus* in the Iſle of *Nexos*, *Maſſilia*, *Iſtria*, *Heraclea* and *Enidus*. So the Philoſopher ſays, That the unjuſt Judgments, or unuſual Severities, exerciſed by the revengeful temper of the Factions, cauſed great Convulſions in the State, as he particularly inſtanceth in *Eurition* at *Heraclea*, and *Archias* at *Thebes*; who both being juſtly condemned for Adultery, yet, becauſe in an unuſual way of Contumely, they were tyed to Stakes in the Market place, they out of revenge, excited their Friends to aſſiſt them, and overthrew the Oligarchy.

(*p*) *Polit. lib.* 5. *c.* 6.

Beſides, when Men are thus eſtabliſhed in Power, few can have Redreſs for their private injuries and wrongs, being that every complaint would but look like contempt of Authority; becauſe the Party oppreſſing, being one of the Aſſociates in Power,

Example in our late Republicans.

Power, and joynt Rulers, he would influence the reſidue to vindicate him. Hence we ſaw in the late long Parliaments Members (yea their Officers and common Soldiers) that they were ſuch Tyrants in their Reſidence and Quarters, that none durſt queſtion their outrages, leſt they ſhould be brought before Committees, for Malignancy or Delinquency. It being a characteriſtic note of a diſaffected Perſon, not to reſign up ones ſelf to an abſolute ſlavery to their imperious Commands.

The World never knew greater oppreſſion, than thoſe that ſtiled themſelves Keepers (indeed Jaylors) of the Liberties of *England*, were guilty of. It would trouble (ſaith a judicious (*s*) Author) a publick Accountant to caſt up thoſe vaſt Summs, and incredible Treaſures, which in leſs than twice ſeven years they raiſed, and ſpent, to ſupport the worſt of all luxurious Rebellion, and to act upon the publick charge and Theater of the Nation (not Maſques and Plays, as they had charged one great part of the Expences of the Court on) but the moſt real and inhumane Tragedies, and thoſe infinite in number, one of which was ſuch as the Sun never ſaw, or any Hiſtory could parallel.

(*s*) *Nalſon*'s Common Intereſt.

It would be endleſs to recount the Annual Revenue of the Crown, Biſhops, Chapter and Cathedral Lands, beſides the Money they received for the purchace of them; the conſtant, heavy and unheard of Aſſeſments, free Quarter, Plunder, Sequeſtration, Compoſitions, Decimations, Exciſe and Cuſtoms, voluntary Contributions of Plate, Jewels, *&c.* Summs borrowed on the Publick Faith (which ſome found to their coſt, was but *fides Punica*) and almoſt innumerable ways and arts they had to ſqueeze and drain the Treaſure of the Nation into their bottomleſs Gulph: ſo that the ſame Writer is confident, That not any three Kings of *England*, ſince *William* the Conqueror, to this preſent, were ſo expenſive to *England*, as that one Tyrannical and Prodigal Parliament.

The Nation was then, and ever will be: under any Uſurping Republic, in worſe than *Egyptian* Bondage. In every County a Committee was placed to ſeize the Eſtates and Rents of all the Loyal Subjects, with ſuch a Tyrannical Arbitrarineſs, as never was known under any Kings Reign; and as if that were not enough, there were added to them *Baſha* Major Generals, and the ſucking Vermine in every Town and Hamlet, were either fire-ſide Troopers, or ſome well affected Perſon whoſe Information would be believed before the beſt in the Pariſh. Every one that would not worſhip thoſe Pagods, were proceeded againſt by ſome of thoſe, or their Arbitrary High Courts of Juſtice, or were convened before the Houſe of Commons, where every one of thoſe Parliament Demarchs were as abſolute as the Laws of their own will could make them.

No Perſon could either queſtion their Actions or Authority, but he paid his Life or Fortune, or one of them, for his preſumption: ſo that we ſaw the whole Kingdom brought into a

ſlavery

ſlavery, far greater than theirs that wear Canvaſe Cloth and Wooden Shooes, and not only look like Ghoſts, but really are ſo, as they made all which they either ſuſpected, feared, or hated: All which was never to have been altered (as long as their ſtanding Force ſhould be true to them) to the incredible charge, oppreſſion and impoveriſhment of the Subjects, Friend and Foe; though they had the Policy to lay the heavieſt Burthen and Load upon the Backs of their Enemies, if poſſible to break them; keeping the Loyal Nobility and Gentry ſo poor, that many of them have not been able, or ever will be, to forget the kindneſs of that Government, which was the ruin of them and their Families.

No juſt Diſtribution of Rewards or Puniſhments.

I ſhall now paſs to the laſt head of Rewards and Puniſhments, and executing of Juſtice; none of which can be according to merit, where prevalent Faction ſhall ſway the Balance, and open and ſhut the Eyes of Juſtice by the cunning Inſtruments of Partiality. It being impoſſible to ſeparate Faction and Intereſt from this kind of Authority, ſo that none ſhall obtain any thing, but according as they ſhall be judged favourable or advantageous to the Intereſt of the ruling Faction. So that the Vertuous ſhall have the leaſt ſhare; ſince Vertue is not over natural to Mankind, it is like to thrive but poorly in a ſoil where it is not tenderly cheriſhed, and frequently refreſhed with the encouraging Dews of Reward and Benefit. But thoſe ſhall have the greateſt ſhare that can beſt wheedle, or ſeem by a well-managed Flattery, to join with the topmoſt governing Party.

Ingratitude of Commonwealths.

I ſhall therefore give ſome examples of the Ingratitude of Commonwealths to the well-deſerving great and brave Men, who have ſerved their Country, and been ill rewarded by the governing Part, or been expoſed to be baited or worried by the People, inſtigated by Factions; or ſuffered baſe Ignominy, Baniſhment, or Death.

I ſhall begin with *Athens*, the eye of *Greece*, and the Seat of the Muſes.

The ill uſage of *Themiſtocles*.

When *Xerxes* invaded *Greece*, the *Athenians* and *Peloponneſians* were the moſt conſiderable States; yet the *Athenians* were forced to leave their City and get into their Navy, which might carry the whole People and their Power to ſome remote Country, where they might enjoy more ſecure Habitations.

The *Spartans* were unwilling to hazzard a Sea-Battle near *Salamis*, but would have weighed Anchor, and gone to *Iſthmus*. *Themiſtocles* did all he could to perſwade the ſtaying and joining of the Fleets there, to wait the Enemy, who would have leſs Sea room; whereas if they fought elſewhere, by his numbers, he would have overborn the Confederates: and when he could not prevail, but that they would weigh Anchor the next day, he ſent a private meſſage to the *Perſian* Captains, that the *Grecian* Fleet intended to fly, and in the *interim* adviſed the *Grecian* Fleet to be in a readineſs againſt all Events: By which Stratagem he toiled the *Perſian* Fleet to make the Attacque with that

that disadvantage he desired; and the *Grecians* obtain'd a most memorable Victory. Several other great Services he did, not only in saving of *Athens*, but the rest of *Greece* from *Xerxes*. But when the *Athenians* were returned to their City, and rebuilt it after the Battle of *Mycale*, the People were so proud of their Exploits, that they not only endeavoured to get the Command of many Towns and Islands of the *Greeks*, but within their own Walls would admit no Government but meerly Democratical; which being argued against by *Themistocles*, they laid upon him the Punishment of the *Ostracism*, banishing him for ten Years; before which time was expired, a new accusation was framed against him by the *Lacedemonians*, that he intended to betray (*t*) *Greece* to *Xerxes*.

(*t*) Sir *Walt. Raleigh*, *lib.* 3. *cap.* 8. *sect.* 7.

So that he was forced to fly to *Artaxerxes*, who afterwards would have imployed him against *Greece*; but he decided the great Conflict betwixt thankfulness to his well-deserving Patron, and natural Affection to his own ill-deserving People, by finishing his Life with a draught of Poyson.

This *Ostracism* was a Sentence of Banishment writ upon an Oyster-shell; and the like in *Sicily*, writ on a Leaf, was called *Petalismus*. This was so often abused by exterminating Persons, not so much for Crimes, as by factious Envy made use of to remove out of the way Persons that were like to oppose the prevailing Factions, that the (*u*) Philosopher confesseth it had been better for the Law-givers at the first so to have attempered the Commonwealth, that they might have had no need of such a Medicine.

(*u*) Βέλτιον μὲν ἦν ἢ νομοθέτην ἐξ ἀρχῆς ὅπως συσπῆσαι ἢ πολιτείαν, ὡς τι μὴ δεῖ τοιαύτης ἰατρείας. *Polit. lib.* 3. *c.* 13.

Of Ingratitude to *Miltiades*.

Miltiades had done the *Athenians* great Service at the Battle of *Marathon* against *Darius*, yet after by this ingrateful People, he was cast into Prison, and fined fifty Talents. Where his weak and wounded Body (having broken his Thigh at the assault against *Paros*) being not able to endure the one, nor his Estate the other, after a few days he ended his Life; and this was occasioned by the Envy of *Xantippus*, Father of *Pericles*. This Envy of the better sort against each other by their private Factions assisted by unthankful and witless People, brought the *Athenians* not many years after from a victorious and famous Commonweal, to a base Subjection and Slavery.

The ill Treatment of *Phocyon*.

I might instance in *Aristides*, *Cimon*, and many others; but shall pass to *Phocyon*, who had been Forty five times (without ever suing for the place) chosen Governour of *Athens*. He had been in good esteem with King *Philip*, and by King *Alexander* was presented with two Hundred Talents in Silver, and the choice of one of four Cities of *Asia*; but refused those and other Gifts, howsoever importunately thrust upon him, resting well contented with his honest Poverty. During his Government, having given his Promise for *Nicanors's* safe coming to the *Piræus*, to treat with the *Athenians*, and his safe return, about their joining with *Cassander* or *Polypserchon*, and finding that the *Athenians* practised with *Dercillus* to take *Nicanor* Prisoner, he

was

was nothing pleaſed with ſuch a trick of politick Diſhoneſty, and ſo did quietly permit him to depart: at which the *Athenians* were ſo incenſed, that he was forced to ſave himſelf by Flight with ſome others, whom *Polypſerchon* ſent to *Athens*, where neither he nor the reſt were ſuffered to ſpeak for themſelves, but were condemned to dye by the unjuſt Judgment of wicked Men, by drinking Poyſon: which, ſaith Sir *Walter Raleigh*, by the juſt Judgment of God, ſo infected the City of *Athens*, as from that day forward, it never brought forth any worthy Man reſembling the Vertue of their Anceſtors. *Lib. 4. c. 3. ſect. 15.*

The Ingratitude of the *Athenians* to *Demetrius*.

It is not to be expreſſed what Honours the *Athenians* gave to *Antigonus* and *Demetrius* his Son, when they aſſiſted them in their neceſſities, and declining Fortune; but when after his Fathers defeat, and death at the Battle of *Ipſus*, *Demetrius* fled to *Athens* for ſuccour, they ſent their Embaſſadors to meet him, with a Decree of the People, that no King ſhould be admitted into their City, Which example I the rather mention, that the difference may be obſerv'd betwixt the generouſneſs of Princes, and ſuch Commonweals: for when ſoon after *Demetrius* reduced *Athens* to his Obedience, they being almoſt Famiſhed and yielding to his Mercy, he did not take away the Lives of theſe unthankful Men, but gave them Food, and placed ſuch for Magiſtrates as were acceptable to the People; yet a ſecond time when *Demetrius* was overcome by *Pyrrhus*, and *Lyſimachus*, the *Athenians* were as ungrateful as ever.

The ill uſage of *Sophocles* and *Phthiodorus*.

Sophocles and *Phthiodorus* the *Athenian* Generals were condemned to Exile by the People, pretending they had taken Money for making Peace in *Sicily*; whereas indeed there was not any means of making War. And *Alcibiades* with *Nicias* chuſe rather to baniſh themſelves, than undergo the Judgment of the incenſed multitude, and adventure their Eſtates, Honours and Lives upon the Tongues of ſhameful Accuſers. And though (ſaith the ſame excellent (*w*) Hiſtorian) it is the part of an Honeſt and Valiant Man, to do what reaſon willeth, and not what Opinion expecteth, and to meaſure Honour and Diſhonour by the aſſurance of his Conſcience, rather than by the malicious Report and Cenſure of ſuch; yet they are to be excuſed, as having before their Eyes the Injuſtice of the People, knowing that a wicked Sentence is infinitely worſe than a wicked Fact, as being held a Precedent and Pattern, whereby Oppreſſion beginning upon one, is extended as warrantable upon all. (*w*) *Idem, Lib.* 3. *c.* 8. *ſect.* 8.

Ingratitude to *Alcibiades*.

The Inſolence of the *Athenians* having after this expedition wearied ſome of the principal Men of *Athens*; four Hundred of them got ſo far the Power into their Hands, that what they had agreed upon in private, was only propounded to the People for their conſent: but this laſted not long. For their Fleet and Army (which was then at *Samos*) revoked *Alcibiades* from Baniſhment, who had lived in *Sparta* (the other famous Commonweal) where in Council and good Performances, he ſo far excelled all the *Lacedæmonians*, that all their good ſucceſs was a-

ſcrib'd to his Wit and Valour: yet there he began to be envied, and ſo withdrew to *Perſia*. Being now called home, ſome of thoſe four Hundred would have reſign'd their Government, yet the moſt of the Faction laboured to obtain Peace of the *Lacedæmonians*, deſiring chiefly to maintain their own Authority.

This *Alcibiades* won many Victories for the *Athenians*, and was made high Admiral; yet he was forced afterwards to baniſh himſelf, only becauſe his Lieutenant, contrary to the expreſs Command of *Alcibiades*, fighting with the Enemies in his abſence, had loſt a great part of the Fleet.

I ſhall add one Story more, and ſo paſs to the *Romans*.

The ten *Athenian* Sea-Captains.

The *Athenians* having appointed ten Captains over their Fleet, wherewith they beat *Callicratidas* the *Lacedæmonian* Admiral; yet ſix of theſe Captains were put to Death upon information that they had not reſcued ſome Citizens, who were loſt by the breaking of their Veſſels by a Storm, which happened when thoſe Captains were obliged to follow the Enemy, and two of them had like to have been ſhipwracked themſelves: and beſides, they offered in their own defence, that they left a ſufficient number of Ships to have ſuccoured thoſe that were wracked. But one that eſcaped in a Meal-tub, having told the People, that thoſe that were drowned, had charged him to deſire the People to revenge their Deaths upon the Captains; this was a ſufficient incentive to the People, precipitately to put them them to death. The abſent Captains eſcaped, and when the Fury of the People was over, the Sentence againſt the reſt was revoked too late.

All theſe ingrateful uſages of ſuch great Commanders is aſcribed to the violence of the People. But we may ſuppoſe, if it had not been for the Arts of ſuch Magiſtrates as were Enemies to thoſe Worthies, and envied them the Glory of their great Atchievements, the People had been better Inſtructed. However it ſhews the tendency of ſuch a complex Body of Magiſtrates and People: and though *Athens* had as much of the popular Government called Democratical, as any elſe in *Greece*; yet the ſource of all was from the Texture of the Republic Government in general.

Concerning the *Roman* Ingratitude.

I ſhall now paſs to the *Romans*, and onely ſingle two or three of the many Examples of their Ingratitude to their deſerving Chieftains, to illuſtrate, That Rewards were not beſtowed as they ought to have been, even to ſuch as were the greateſt Preſervers of their Country, and ſuch as raiſed the Glory of the *Roman* Name to the higheſt pitch of Glory.

Coriolanus.

T. Martius, called *Coriolanus*, had conquered the *Volſci* and *Æqui*; yet, under pretext that he had adviſed to ſell Corn in time of Dearth at an higher Rate than was convenient, he was baniſhed: Yet he took not that Revenge he might have done, in joyning with the *Volſci*.

Furius

Furius Camillus ſubdued the *Faliſci*, but was baniſhed the City, upon a Suggeſtion of ſome Inequality of dividing the Spoil, and retired to *Ardæa*; from whence (when the *Gauls* under *Brennus* had got all *Rome* but the Capitol) he, forgetting the Ingratitude of his Country, drew an Army together, with which he fell upon the diſperſed *Gauls*, and ſo ſaved his Country. *Furius Camillus.*

The two *Scipio's* ſtrangely enlarged the *Roman* Empire, by conquering every place where they were employed. *Publius Scipio*, the elder Brother, overthrew *Hannibal*, and ſubjected the whole State of *Carthage*; by which he deſervedly had the Style of *Africanus*, as his Brother had that of *Aſiaticus*, by conquering the Kingdom of *Macedon*, and giving Laws to all *Greece*, and other Territories in *Aſia*. The two *Scipio's.*

Concerning the elder, the Senate was unwilling he ſhould carry the War into *Africk*: But the People were earneſt for it. Upon which the Learned (*x*) Hiſtorian and Stateſman obſerves, That it is often found in Councils of State, that the buſie and obſtinate Heads of a few do carry all the reſt, and many times Men make a ſurrender of their own Judgments to the Wiſdom that hath gotten it ſelf a Name, by giving happy Directions in Troubles by-paſt; therefore he that repoſeth himſelf upon the Advice of many, ſhall often find himſelf deceived: The Counſel of the Many being wholly directed by the Empire of a Few, that overſway the reſt. For here *Q. Fabius* was accounted the Oracle of his time; for his wary Nature ſuited well with the Buſineſs that fell out in the chief of his Imployment; therefore others adhered to him, that was grown old in following one Courſe, from which they would not ſhift as the change of Times required. But the People (who though they could not well adviſe and deliberate, yet could well apprehend) embraced the needful Motion of *Scipio*, and furniſhed him with all Supplies and Furtherance they could. Concerning *Publius Scipio*, the elder Brother.

(*x*) Sir *Walter Raleigh*, *l.* 5. *c.* 3. *ſect.* 18.

From hence I may note the Inconvenience of this Government, wherein ſometimes the Senators ſhall be led by one, or ſome few, one way, and then by others, and ſometimes the People ſhall over-rule the Votes of the Senate: For though this may be fortunate at ſome times, yet at others it may be as fatal.

The great Succeſs of *Scipio* was celebrated with that exceſs of Joy, and deſervedly, as *Rome* perhaps never ſhew'd the like; and his Brother *L. Scipio*'s Triumph was not much leſs than it. Yet theſe two ſo famous Brothers afterwards were called, one after another, by two *Tribunes* of the People, to Judgment, in probability by the inſtigation of ſome of the Faction of the Senate againſt them.

The *African* could not endure that ſuch unworthy Men ſhould queſtion him of purloining from the common Treaſure, or of being hired by *Antiochus* to make an ill Bargain for his Country: When therefore the Day of Anſwer came, he ap-

peared before the *Tribunes*, not humbled as one accuſed, but followed by a great Train of his Friends and Clients, with which he paſſed through the midſt of the Aſſembly; and having Audience, told the People, That upon the ſame day of the Year he fought a great Battel againſt *Hannibal*, and finiſhed the *Punic* War by a ſignal Victory: In memory of which, he thought it no fit Seaſon to brabble at the Law, but intended to viſit the Capitol, and there give Thanks to *Jupiter*, and the reſt of the Gods, by whoſe Grace, both on that day, and at other times, he had well and happily diſcharged the moſt weighty Buſineſs of the Commonweal; and that if from the ſeventeenth Year of his Life, until he now grew old, the Honourable Places by them conferred on him, had prevented the Capacity of his Age, and yet his Deſerts had exceeded the Greatneſs of thoſe Honourable Places, that then they would pray, That the Princes and Great ones of the City might ſtill be like to him. So all followed him, except the *Tribunes*, and their Slaves, and one of the Cryers, by whom ridiculouſly they cited him to Judgment, until for very ſhame (as not knowing what elſe to do) they granted him, unrequeſted, a longer Day.

But after, when he perceived that the *Tribunes* would not let fall the Suit, he willingly withdrew from that unthankful *Rome*, that could ſuffer him to undergo ſuch Indignities, and ſo ſpent the reſt of his time at *Linternum*.

Concerning *Lucius Scipio*, the younger Brother.

The ſame *Tribunes* proceeded more ſharply with his Brother *Lucius Scipio* the *Aſiatick* (whoſe wiſe Conduct and Valour had ſubjected *Greece* and *Macedonia* to the *Roman* Yoke, and extended their Empire over thoſe rich Countries). They propounded a Decree unto the People touching Money received of *Antiochus*, not brought into the Common Treaſury; that the Senate ſhould give Charge unto one of the *Prætors* to inquire and Judicially determine thereof: And Matters were ſo carried againſt him, that he was condemned in a Sum of Money far greater than his Ability; and for non-payment, his Body ſhould have been laid up in Priſon; but he was freed from the Rigour of this by *Gracchus* the *Tribune*: and his Eſtate being confiſcated, when there neither appeared any Sign of his being beholden to *Antiochus*, nor there was found ſo much as he was condemned to pay; then fell his Accuſers, and all whoſe Hands had been againſt him, into the Indignation of the People.

It is obſerved, That *Cato* the elder (who had been his Treaſurer) was a Promoter of this. A Man, ſaith Sir *Walter Raleigh*, of great, but not perfect Vertue; Temperate, Valiant, and of ſingular Induſtry; Frugal of the Publick, and of his own; who though not to be corrupted with Bribes, yet was unmerciful and unconſcionable in increaſing his own Wealth, by ſuch means as the Laws did permit. Ambition was his Vice, which being joyned with Envy, troubled both himſelf, and the whole City: And ſome write, That *Fabius Maximus*, out of ſome private diſpleaſure, countenanced theſe Proceedings.

From

Summary of the *Roman* Diſcords.

From theſe and other Examples it may well be noted, how this famous Commonweal was peſtered with Faction; the want of ſufficient Imployment were Sparks that help'd the kindling of the Fire of them, which now began to appear, and firſt caught hold of thoſe great Worthies, to whoſe Valour and Conduct *Rome* was ſo indebted. But theſe factious Contentions did not long while contain themſelves within heat of Words and cunning Practice: for when the Art of Leading the Multitude into ſuch quarrelſom Buſineſs, grew to perfection, they that found themſelves overmatched by their Adverſaries, at this kind of Weapon, began to make oppoſition, firſt with Clubs and Stones, afterward with Swords, and, finally, proceeded from Frays and Murthers in the Streets, to Battels in the Fields.

During the whole time of their Commonwealth, there were Heart-burnings betwixt the *Plebs*, or ordinary Rank of People, and the *Patres Conſcripti Patricii*, or Senatorian Order: Thoſe never owning themſelves to be the Delegates of the People, but an Order of themſelves, that endeavoured to keep the Government in themſelves, taking State and Authority upon them, uſing a ſort of Arbitrary Government, endeavouring to win a great Power over the People, decreeing, That the Conſuls provide that the Commonweal receive no detriment. On the other hand, the People were reſtleſs, by Repreſentatives to get a ſhare in the Government, and the Senate as ſtoutly oppoſed ſuch Encroachments and Innovations, (theſe kind of Emulations being the inſeparable Diſeaſes of all Commonwealths;) ſo that in one of the Mutinies the whole Commonalty forſook the City, and (*y*) embodied upon Mount *Aventine*, till they were gratified, as I have before hinted, in the *Tribuni Plebis*, who were choſen by them to look after their Concerns in all Debates, and who exerciſed a very imperious Power ſometimes. Yet this did not ſuffice; but afterwards they more violently contended to have the Choice of one of the Conſuls: and the Fury of the People was ſo great, that the Senators durſt not come to the Houſe; and this Feud was ſo durable, that it cauſed a five-years Anarchy, and at laſt the Senate was forced to yield to the Peoples Importunities.

(*y*) *Liv. lib.* 2.

After the death of *C. Gracchus*, and *Saturnius*, a Popular Man, who by the Senate was put out of the way; it was not long e're *Marius*, a famous Captain of theirs, was ſo condemned, who, by force of Arms, returned to the City, and murthered all the principal Senators; which, giving unto *Sylla* (who proſpered therein) opportunity to make himſelf abſolute Lord of *Rome*, taught *Cæſar* (a Man of higher Spirit) to affect and obtain the like Sovereign Power, who by the like decree of the Senate, was provoked.

If all that I have hitherto mentioned, be not ſufficient to put a People out of love with this way of Government, they may hug their Chains and Fetters as long as they pleaſe, for me.

I know

Concerning three Modern Commonwealths.

I know theſe People magnifie the wiſe contrivances of the State of *Venice*, the *United Provinces*, and *Switzerland*. But they may conſider, That the firſt is an Optimacy mixed with a reſtrained and elective Monarchy; and they all are more beholden to the Situation of their Countries, and the intereſt their Neighbours have (leſt they ſhould fall into the hands of others) than for any excellency of their Conſtitution, why they ſhould have any likelyhood of duration.

The Prince of *Orange*'s Stat-holder-ſhip, being Hereditary in the Family, contributes ſomething to the ſuppreſſing of any potent Faction; yet none knows, but in proceſs of time, Factions may ariſe amongſt them, and then the World will ſee them molder, as other ſuch Commonwealths (ſometimes as flouriſhing as they;) and then they will either be made a prey to their Neighbours, or ſubmit to a Monarch of their own. However it is experimentally known, That in no other State, the Subjects pay ſo much for their protection; and that from their firſt Revolt, they have been very few years without being engaged in chargeable Wars.

CHAP. IX.

Of Monarchical Government, and the Preference of it before other Forms.

IN the commendation of Monarchy, all Authors are ſo copious, that it is more difficult to order and compoſe with Beauty, the Jewels of the Crown, than to amaſs and heap them. That it hath been the moſt Antient and Primitive Government of the World, we have the Univerſal ſuffrage and Teſtimony of all the preſerved Records of remoteſt Ages; Royal Authority and Kings being coæval with what ever Monuments we find of the Origin of Nations.

The Antiquity of Monarchy illuſtrated in *Adam*'s Sovereignty.

The Writings of *Moſes* (much ancienter than any other Hiſtorian, and of more Authority) evidently prove the Sovereignty of *Adam* and *Noah*: Whence St. *Chryſoſtom* well obſerves, That at the Creation, God made one Man, not many; to intimate to us, That he did deſign Monarchy, not Ariſtocracy or Democracy. For it cannot be doubted, but that the Poſterity of *Adam*, during his life, were his Subjects, both by the Law of God and Nature: The Charter of God Almighty giving to *Adam*, Dominion over all the inferior Creation; and to *Noah*, over every living Creature. Hence the (*a*) Poet ſpeaking of the Origin of things, owns his Dominion over the Creatures.

(*a*) *Ovid. Metam.*

Sanctius

Sanctius his Animal, mentisque capacius altæ,
Deerat adhuc, & quod dominari in cætera posset.
Natus homo est——

Indeed it were absurd and irrational to believe, that God who had made the Lion King of the four footed Beasts, the Eagle Sovereign of the feathered Fowl, and the Whale over the Fishes; should leave the most glorious part of the Creation, under the confusion of Anarchy or Parity.

Therefore (*b*) *Seneca* elegantly, and according to his manner, rightly observes, that Nature it self points out Kings, as we may know in several living Creatures, especially in Bees: and (*c*) *Virgil*, before him, hath given us a curious description of the Obedience Bees pay to their King:

Monarchical Government most natural.

(*b*) *Natura commenta est Reges, quod ex aliis animantibus, & Apibus præsertim, licet dignoscere.*

(*c*) *Virgil. Georg.*

Præterea Regem non sic Ægyptus, & ingens
Lydia, *nec Populi* Parthorum, *aut* Medus Hydaspes,
Observant. Rege incolumi, mens omnibus una est;
Amisso, rupere fidem——*Illum admirantur, & omnes*
Circumstant fremitu denso, stipantque frequentes;
Et sæpe attollunt humeris, & corpora bello
Obiectant——

So there may be observed a *Dux ipse Gregis*, amongst all brute Creatures.

It is from Paternal Power, That many Authors deduce the naturalness of Monarchy, which was first exercised in Families, Herds and Septs, as I have (*d*) elsewhere cleared: therefore the Philosopher (*e*) sets it down as a Fundamental Truth, That that which begets commands, by reason of his tender Love and older Age, which is a kind of Kingly Government. The sence of which is, That the Paternal Government hath a resemblance to Monarchical Rule; and that it was according to the order of Nature, that the Elder should Rule, as he confirms by the Oracle and Authority of (*f*) *Homer*, who making *Jupiter* Sovereign, calls him Father of Men and Gods; and the great Badge of Sovereignty, to have Power of Life and Death, is owned by the (*g*) Orator, in his time, to remain, when he saith, The Father had the Power of Life and Death over his Children. So that what *Brutus*, the first Consul, did in beheading his two Sons, is not taken by most to be done *qua Consul*, but as Parent; for that the Consuls never had any Regal Power without leave of the People.

(*d*) *Cap.* 2.

(*e*) Τὸ γὰρ γεννῆσαν καὶ φιλίαν ἄρχον καὶ καλὰ πρεσβεῖαν ὄζιν, ὅπερ ὄζὶ βασιλικῆς ἔδος Ἀρχῆς. *Polit. lib.* 6. *c.* 12.

(*f*) Πατὴρ Ἀνδρῶν τε Θεῶν τε.

(*g*) *Pater vitæ necisq; potestatem habebat in filios.* Cicero.

If we consider the Scope of (*h*) *Moses*'s Expostulation with God Almighty; *Why layest thou the burthen of all this People upon me? Have I conceived all this People? Have I begotten them?*] must from hence infer, That if He had been their common Parent, he ought to have had the Charge and Government

(*h*) *Numb.* 11.

ment of them; so natural seems the Connection betwixt Fatherly Authority and Filial Obedience: and that this was an Original Truth, the Philosopher cites (*i*) *Homer*, who saith, That every Father, to his Children and his Wives, gives Laws.

(*i*) Θεμιστεύει δ' ἕκαστος ἠδὲ παίδων ἠδ' ἀλόχων. *Odyss.* 11.

This kind of Power seems to be confirmed in Scripture, concerning *Cain*, *Abraham* sacrificing *Isaac*, *Thamar* and *Jephtha*. But in after times, when Fathers abused that Authority, it was judged expedient to deprive them of it, and place it in the hands of the more publick Father, the King.

The Antiquity of Monarchy from History and Testimony.

Having thus cleared the point, That Monarchy is according to the Institution of Nature. I come now to speak of the Antiquity of it. (*k*) *Sanconiathan*, of greater Antiquity than any *Greek* Historian, gives a large account of the *Phœnician* Monarchy; the like *Manetho* gives of the *Ægyptian*, and the true *Berosus* of the *Babylonian*. So * *Aristotle* speaks of the long Duration of the *Molossiac* Kingdom, which began in *Pyrrhus* Son of *Achilles*, and, according to (*l*) *Reinerus*, lasted nine Hundred and Fifty years; and the *Lacedæmonian*, according to *Plutarch*, *Eusebius* and others, continued near upon as long.

(*k*) *Vide Stillingfleet's Origines Sacræ.*

* Polit. *lib.* 5. *c.* 11.

(*l*) *De Antiquis Familiis Regum.*

(*m*) Καὶ τὰς Θεὰς δ' ὑπὸ τοῦτο πάντες φασὶ βασιλεύεσθαι, ὥσπερ δ' καὶ τὰ εἴδη ἑαυτοῖς ἀφομοίουσιν οἱ ἄνθρωποι, οὕτω καὶ τὰς βίους περὶ θεῶν. *L.* 1. *c.* 1.

The Philosopher (*m*) advanceth the Origin of Kingly Government, as high as the Heathen Religion or Philosophy could carry him, when he saith, That the very Heathen Deities were under this Form and Regimen: So what *Herodotus* saith of the *Egyptians*, may as truly be said of all other Nations, That they could not live without Kings. So *Isocrates* saith, Before Democracy and Oligarchy, the barbarous Nations and Cities of *Greece* obeyed Kings. Therefore the Philosopher (*n*) saith, At first Kings governed Cities, and now Nations. So *Salust* (*o*) saith, The name of Empire was first known in the World; and *Justin* (*p*) most expressly, In the beginning of all things and Nations, the Power and Government was solely and absolutely in Kings. So (*q*) *Cicero* saith, That it is certain that all Ancient Nations did obey Kings. If we consult *Homer*, *Plato*, *Lucretius*, *Diodorus Siculus*, lib. 2. *Josephus* lib. 4. c. 1. or any Historian, Greek or Latin, we shall find no Tract of Time, nor Society of Men, without Kingly Government.

(*n*) Τὸ πρῶτον ἐβασιλεύοντο αἱ πόλεις, καὶ νῦν ἔτι τὰ ἔθνη. *Ibid.*

(*o*) *In terris nomen Imperii primum fuit.*

(*p*) *Principio rerum Nationumq; omnium imperium penes Reges erat.* Lib. 1.

(*q*) *Certum est omnes Antiquas Gentes Regibus paruisse.* Lib. 3. de LL.

The first Commonwealths.

The first Popular State we read of, is that of *Athens*, after the Reign of *Erixias Anno Mundi* 3275. and after that several other Cities of *Greece*, as *Sparta*, *Corinth*, &c. followed their examples, expelling their Kings, and in their Rooms erected little Commonwealths, but great Tyrannies, being in a continual broil, either among themselves, about their Magistrates, or with their Neighbours for Preheminence, till the time of *Alexander* the Great, and the *Macedonian* Monarchy, when the Country returned to their pristin Government, and might so have continued, if the *Roman* Arms and Ambition had not overthrown it.

As to *Rome* it self, it was two Hundred and Fifty Years under Kings; and Kingly Government was found under *Lavinius*, when

when the *Trojans* came from that little Kingdom of *Pergamus*. Therefore (r) *Tacitus* tells us, That the City of *Rome*, from the beginning, had Kings to govern it. Their Commonwealth began upon the *Regifugium*: So that (ſaith a Judicious (s) Author) for three Thouſand Years Monarchy poſſeſſed an Univerſal and Uninterrupted Empire over all the Affairs of the Univerſe; ſo that the Sun, the glorious Monarch of the day, does not, in all his Travels round the earthly Globe, behold any ſpot of Ground inhabited by any thing but Brutes, where Monarchy, either is not at preſent, or hath not been the Antient Original and fundamental way of Government.

(r) *Urbem Romam a principio Reges habuere.* 1. Annal.

(s) Dr. *Nalſon*'s Common Intereſt.

Authors deducing Monarchy from a Divine Original.

From the conſideration of this Naturalneſs of Monarchy, and the Venerable Antiquity of it, we may conclude the reaſon why the beſt and Ancienteſt Writers have adorned it with ſuch *Eulogiums*, deducing its Original from the Divine Being. So *Heſiod* (t) ſaith, Kings are from *Jove*; and (u) *Callimachus* adds, that none are ſo Divine as they: So in *Homer* (w) as well as in *Heſiod*, they are ſtiled, nouriſhed of God, and born of God; not as deriving their Pedigrees, but Kingly Honours from *Jove*, as *Euſtachius* notes; and from *Homer*'s making the Scepter of *Agamemnon* to be the Gift of *Jove* (though a late (x) Author contemptuouſly compares it to a Conſtables Staff) He (y) ſaith, The King hath both his Scepter and Juriſdiction from God: Of which the curious Reader may ſee more Authorities in the learned Tract of Archbiſhop *Uſher*'s Power of Princes.

(t) Ἐκ δ' Διὸς βασιλῆες. *Theog.* v. 91.

(u) Ἐπὶ Διὸς ἄδην Ἀνάκτων θειότερον. *Hymn. in Jovem.*

(w) Διοτρεφὴς καὶ Διογενὴς. *Iliad.* O. v. 277.

(x) Abſolute Power, p. 63.

(y) Ὁ δ' Ἀναξ σκῆπτρον θεόθεν ἔχει καὶ θέμιστας. *Iliad.* 4. v. 738.

(z) Plato, according to *Syneſius de Regno*, makes the Regal Office to be a Divine Good among Men; and a King to be as it were, a God among Men: And (a) *Diotogenes* the *Pythagorean* ſaith, that God hath given him Dominion.

(z) Θεῖον Ἀγαθὸν, οἷον Θεὸς ἐξ ἀνθρώπων.

(a) Δέδωκεν ὁ Θεὸς αὐτῷ τὴν ἀγαθωσύνην. *In Politico.*

Others have ſtiled them Gods, which a late (b) Author ſaith, may be allowed for want of a better in *Hobs*'s State of Ignorance and Atheiſm, and would have him have the Epithete of *Optimus* as well as *Maximus*. Thus ſome take a Liberty to ridicule all things moſt Sacred and Venerable: But I ſhall have occaſion to enquire into ſuch Mens Principles afterwards, and at preſent ſhall only ſay, That no Mans Hyperbole, or Expreſſion, is further to be underſtood, than as it makes the Kingly Original from God, and makes Kings his Viceroys upon Earth. Therefore I ſhall not balk ſuch Authorities.

(b) Abſolute Power, p. 66.

(c) *Plato* affirms Monarchy to be the moſt uncompounded, the Mother of all Governments, and that a King is to be a God amongſt Men; and a King is a living Image of God, ſaith the (d) Poet. So the *Grecian* Orator ſaith, God from Heaven ἐκ τῆς ἐρανῆς, did ſend the Regal Power unto the Earth.

(c) 2. *de LL.*

(d) Εἰκὼν ὁ βασιλεύς ἐστιν ἔμψυχος Θεός. *Menander.*

(e) *Diotogenes* yet raiſeth the Character higher, according to the Sovereignties of his Age; That the King, having a Power uncontrollable, and being himſelf a Living Law, is the Figure or Adumbration of God among Men: And in (f) another place, Of all things which are moſt honourable, the Beſt, indeed,

(e) Νόμος ἔμψυχος. *Apud Stob. Serm.* 46.

(f) *Idem*, 121.

(g) Τὴν εἰκόνα φέρει τῆς ὅλης πάντων Θεοῦ. c. 37.

is God; but on Earth, and amongst Men, the King. (g) So *Agapetus* observes, That although the King in the Nature of his Body be of the same Mold with every other Man; yet in respect of the Eminence of his Dignity, he is like unto God over all, whose Image he beareth, and by him holdeth that Power which he hath over all Men.

(h) *Augustin's Numismata per totum.*

Hence it was, that the *Roman* Emperors (not to make Researches further) in their (h) Coins used some Emblems and Impressions proper to their Gods, or their Religion; inferring, That they derived their Character from them. So in the Coins of *Julius Cæsar* we find the Image of *Venus*, from whom he deduced his Extraction. So we find the Goddess *Victory*, the Image of *Mars*, and the *Caduceus* often, and Ensigns of the High Priest; and not onely in his, but in many other Emperors Coins, the Thunderbolt, to denote, they had the same Power upon Earth, that their *Jupiter* had in Heaven: according to that of the Poet,

Jupiter in cœlis, Cæsar regit omnia terris.

After that *Julius Cæsar* was in *Divos relatus*, we find a Star over his Head, or himself sitting in the Habit of a God, holding in his Hand a *Cornucopia* ascribed to the *Genii* and *Hero's*, and in his Left-hand holding the Goddess *Victory*.

So in one of *Augustus's* Coins, we find *Victory* sitting upon a Celestial Globe, holding a Scarf in a Circular Figure in its Hand, denoting Eternity.

In *Otho's* Coin *Jupiter* is placed in a Chair, with a Spear in his Hand, with the Circumscription, *Jovis Custos*, *Jupiter Custos*. For it appears out of the Verses of *Ennius*, and out of *Hyginus* and *Apuleius*, that in the Nominative Case *Jovis* was used for *Jupiter*. So in a Coin of *Titus* the *Sella Jovis* and Thunderbolt are to be found. And *Trajan* holds a Thunderbolt and Spear, and is Crowned by the Goddess *Victory*; and in another, *Jupiter* with his Thunderbolt in his Hand is shrowding *Trajan* under his *Pallium*, according to which, (i) *Pliny* saith of him, *Te dedit qui erga omne hominum genus vice tua fungeris*. So in the same *Trajan* and *Hadrian's* Coins, the Head of the Sun is figured with a radiated Crown, as representing them; of which Custom the *Tabulæ Heliacæ* may be consulted: and although *Chrysologus* reprehends it as a proud affectation in the *Persian* Kings, that with radiated Heads they place themselves in the figure of the Sun, or are effeminate into that of the Moon, or assume the form of Stars; yet we may suppose such Impresses were to testify to the People from whence they derived their Origination, or whose Tutelarship they were under.

(i) Panægyr.

For after Christianity obtained, *Constantine* wore in his great Ensign called the *Labarum*, the Figure of the Cross, and the Letters which appeared to him in the Air, with the Circumscription, *sub hoc signo vinces*. So (k) *Theophylact* and *Manuel Comnenius*,

(k) *Octavius Strada de Imp. Rom. p. 294, 338.*

Comnenius, in their Medals, have Chriſt figured putting a Garland upon their Heads.

Hence a grave (*l*) Author ſaith, The Prince's Publick Power in Earth is a kind of Image of the Divine Majeſty; in the ſame ſenſe with that of (*m*) St. *Ambroſe*, Princes for the correcting of Vice, and prohibiting of Evil, are erected of God, having his Image, that the People may be under One.

(*l*) *Principis poteſtas publica eſt in terris quædam divinæ Majeſtatis Imago.* Sariſburienſis, l. 4. c. 1.
(*m*) *Com. in* 13. Rom.

We Chriſtians have the Authority of Holy Scripture, That by God Kings reign, and that they are his Anointed. So *Daniel* ſaith to *Nebuchadnezzar*, *The God of heaven hath given thee a kingdom*; and to *Cyrus*, *God gave to Nebuchadnezzar thy father a kingdom.*

So (*n*) *Irenæus* affirms, That by whoſe Command they are born Men, by his Command likewiſe they are ordained Kings. Agreeable to which, is that of (*o*) *Tertullian*, Thence is the Emperour, whence he became Man before he was Emperour; thence he hath his Authority, from whence he hath his Breath.

(*n*) *Cujus juſſu homines naſcuntur, hujus juſſu & Reges conſtituuntur.* Lib. 5. c. 24.
(*o*) *Apolog. cap.* 31. *Inde eſt Imperator, unde homo antequam Imperator; inde poteſtas illi, unde & ſpiritus.*

A late (*p*) Author ſcornfully confronts the Sentiments of ſo many Learned and Judicious Perſons, with that of *Aratus*, Τοῦ γὰρ καὶ γένος ἐσμέν, That all Men are the Off-ſpring of the Deity. Which if we allow in his ſenſe, then *Pierce Plowman* is of as good Divine Authority as any Crowned Heads. Whereas St. *Paul*'s Application makes it to be meant quite another way, *viz.* of the Creation of Man by God Almighty. But I ſhall paſs to other Remarks.

(*p*) Abſolute Power, p. 46.

The Philoſopher makes Four kinds of Kingly Government. Firſt, That of *Sparta*, where there were two Kings of two Royal Families, the one a Check upon another: And this was, he ſaith, (*q*) a Generalſhip onely of an Army; for they had not the Power of Life and Death, but in Expeditions of War; as he inſtanceth in *Agamemnon*, whom *Homer* makes patiently to endure the Reproaches of the Great Men in the Aſſemblies. For, he affirms, That in Times of Peace the Power of Life and Death was in the Senate and the *Ephori*. So in the *Roman* Commonweal, the Generals having the Style of *Prætores* and *Imperatores*, when the Republic was changed by *Julius Cæſar*, he retained the Military Name of *Imperator*, which the *Grecians* rendred *King*: And thence it is that *Ammianus* ſaith, That *Valentinian* was the firſt that changed the *Roman* Empire from a Principality to a Kingdom. But to return from this Digreſſion: This *Laconic* Commonwealth had Hereditary Kings, with a Power in War and Divine things, limited by Law: Of which the Curious may read *Plutarc. de Lycurgo*, and *Xenophon de Republica Lacedæmoniæ*, and (*r*) *Giphanii Comment. in Ariſt. Polit.*

Ariſtotle's Diviſion of Kingly Government.
(*q*) Ἡγεμών ἐστι τῶν περὶ τὸν πόλεμον. *Polit. lib.* 3. *c.* 14.
(*r*) *Pag.* 384.

The ſecond kind of Kingly Government, he calls that which was amongſt the Barbarous (for ſuch the *Grecians* ſtyled all Nations that were none of their Country); and this, he ſaith, had a Power equal to the Tyrannical, yet was legitimate, and according to the Uſe of the Country; for that the Barbarous Nations were more prone to Servitude than the *Grecians*; and the Πατρικαί.

Asiaticks endured with less trouble than the *Europeans*, that Command which he calls Absolute, as of Masters over Servants. This he calls in reality, Tyrannical Government; but Kingly also, in that it is firm, legitimate, and according to the Use of the Country. For that, he (s) saith, Citizens or Subjects defend Kings, but Guards of Strangers are employed by Tyrants: Kings commanding lawfully, over the willing; and Tyrants, over the unwilling, and without Rules of Law.

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The third kind he calls that which among the *Grecians* was styled the *Æsymnetian*: And this, he (t) saith, was an Elective Tyranny, either perpetual for Life, or for a time. And this, because it was a Command over the Willing (such Persons being elected) he styles a Kingly Government, and instanceth in the *Mitylenians*, who chose *Pittacus* to be their King, against *Alcæus* and *Antimenides*, who were banished. Such (u) *Dionysius* makes the *Roman Dictators:* Such the *Cumæni*, by an honester Name styled their Tyrants; and such were the Ἄρχοντες of *Athens.* Such a Kingdom *Timolio* held at *Syracuse*, which he, as well as *Pittacus*, spontaneously resigned, and did not convert into a Tyranny, as *Dionysius* did; or as *Sylla* and *Julius Cæsar* did at *Rome*, and *Aratus* at *Sicyon*, according to the (w) Orator.

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The last kind he calls (x) *Heroic*, because it was used in the Heroick Ages, and had three Characteristicks of true Kingly Government; That it was a Power exercised over the Willing, Fatherly, and Legitimate. For, he saith, the first Kings, either for the Benefits they conferred on the Multitude, by Invention of Arts, Conduct in War, or leading them out in Colonies, or supplying them with Lands, governing those who freely yielded to obey, were in that esteem, and had that Power and Authority which was requisite.

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This was that Monarchy which was known in the first Ages of the World. All People in all Ages, and all places having by constant Experience found it most conducive to their Happiness, and well-being. For had there been any other form, under which Mankind could have rationally promised themselves more, or more certain Happiness than under this; all humane care would long e're this have hit on it, and there would have been an universal *Regifugium.* But

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are the inſeparable Aſſociates, and cloſe Concomitants of all other Forms. But in Monarchy, hereditary Succeſſion is as a Golden Chain, that holds faſt together and cloſe every part of the Royal Contexture in it ſelf, and leaves no Chaſms, Chinks, or Ruptures, whereby any diſſolving cauſe can be admitted entrance to ſubvert or disjoint the Frame.

I have before ſpoke of this Head, and ſhall only add, that as Kingly Government was the firſt; ſo when Commonwealths were introduced with much ſtrugling, they kept Life a while in *Greece* and *Rome*; but have been reduced to Monarchy again about one Thouſand ſeven Hundred Years ſince.

Tacitus after his ſhort way tells us, that *Rome* had Kings firſt; that *L. Brutus* appointed Liberty and Conſulſhip; Dictatorſhip was ſometimes aſſumed; the *Decemvirate* laſted not alive two Years; nor did the Conſular right of the *Tribunes* of the People long continue; nor was the command of *Cinna* or *Sylla* durable; and the power of *Pompey* and *Craſſus* devolved upon *Cæſar*, as the Arms of *Anthony* did upon *Auguſtus*, who received all (being weakned, wearied, tired out, or ſpent with civil Diſcords) under the Empire of a Prince. From whoſe very Name the title of *ſemper Auguſtus*, and *Cæſar* is continued to this day, which duration in no Commonwealth can be found. Therefore every one that deſires to live under an uniform, unchangeable, and durable Government, muſt prize and value Monarchy moſt.

Urbem Romam a principio Reges habuere. Libertatem & conſulatum L. Brutus inſtituit. Dictaturæ ad tempus ſumebantur, neque Decemviralis Poteſtas ultra biennium, neque Tribunorum militum Conſulare jus diu valuit. Non Cinnæ, non Syllæ longa dominatio; & Pompeii, Craſſique potentia cito in Cæſarem; Lepidi atque Antonii arma in Auguſtum ceſſere, qui cuncta diſcordiis civilibus feſſa nomine Principis ſub Imperium accepit. Tacit. l. 1. Annal.

Monarchy hath no Private Ends.

It is furthermore the peculiar Excellency of Monarchy, that it hath no ſeparate or diſtinct Intereſts, or Deſigns, from the Good of the Publick; the End of all juſt Empire being the Safety and Profit of the Subjects, ſaith a (*f*) Judicious Hiſtorian. For a King, neither in time of Peace or War, can ever have any Good or Evil befal him, wherein his Subjects have not their ſhare. It is onely in Monarchy where Paternal and Conjugal Love are in the higheſt degree and relation, betwixt the Prince and his People; the (*g*) Bleſſings of Happineſs, or the Miſeries of Infelicity, are ſtowed in the ſame Bottom. So that a Monarch conſulting the Safety, Honour, Welfare, Peace, and Proſperity of his People, doth at the ſame time conſult his own Intereſt in every one of them; and this muſt of neceſſity oblige him to act ſtrenuouſly and conſtantly in all his Endeavours for the attainment of thoſe Ends. This will induce him to exert all his Royal Vertues, of Juſtice, Fortitude, *&c.* will cauſe him to be watchful to ſuppreſs the Turbulent and Factious, who would diſcompoſe the happy Harmony at home, and be vigilant againſt the Attempts of Foreign Powers. For the State can neither ſink by Inteſtine Diſcords, or fall by Foreign force, but he muſt be ruined with it, and ſo out of the natural Tenderneſs, care and concern for the Safety, Peace, and Happineſs of himſelf and People, he muſt be truly a Father of his Country; whereas the Members or Repreſentatives of a Republic, are at beſt but Guardians (and greedy ones, as we

(*f*) *Finis juſti Imperii, utilitas obedientium & ſalus.* Ammianus, lib. 30.

(*g*) *Nalſon's* Common Intereſt, *p.* 111.

of

of late experienced) who generally commit great Waſtes.

The common objection, perpetually in the Mouths of Democratick Factious People, is that Monarchy is apt to degenerate into Tyranny, according to that of the (*h*) Philoſopher; who, having recounted the external and intrinſick cauſes of the decay of other forms of Governments, ſaith, that the diſſolution of Kingdoms happens rarely from external Cauſes, and ſo they are more durable; but it may happen from two intrinſick ones, *viz.* the Diſſention of thoſe of the Royal Family, or Princes, or when Kings govern ſomething Tyrannically.

Objection, That Monarchy is apt to turn to Tyranny.

(*h*) Βασιλεία ἐξ αὐτῆς δ' αἱ πλεῖσται φθοραὶ συμβαίνουσι.

Φθείρεται δ' ἢ κατ' δύο τρόπους, ἕνα μὲν, ὥσπερ απαντων ὧν μετέχοντων τῆς Βασιλείας. ἄλλον δ' τρόπον, τυραννικώτερον πειρώμενον διοικεῖν. *Lib.* 5. *Polit. c.* 10.

But this is only true where Monarchy is Abſolute, Arbitrary, and Unbounded; which in the *Engliſh* Monarchy is much otherwiſe. For though the Kings of *England* (where they have not precluded themſelves by their gracious Condeſcentions and Grants to their People) are not limited by any other Power than their own Royal Pleaſure: Yet their Conceſſions have been ſo many, and formed into Laws (as Meaſures and Standards of Government) that they are Mounds and Boundaries, which the Monarchy hath no leſs Prudently than Indulgently been pleaſed to give it ſelf, thereby to eaſe the Subject of any juſt occaſion of Fears or Jealouſies (which receive their Birth from the formidable redundancy of their abſolute Power) and by this means the Government is ſecured from the falling into an Arbitrary and Tyrannical way of Rulers, and the Minds of the Subjects freed from the dreadful apprehenſion of Slavery. And as by this Incomparable method of goodneſs, and generoſity in our Princes, the Subjects of all conditions are the more powerfully obliged to all dutiful Allegiance to their temperate Government; ſo the Government it ſelf is thereby rendred more capable of effectually anſwering all the Ends and Intentions of Society.

When it is debated whether Monarchy or Tyranny be the moſt convenient Government; the true Sence of it is this, Whether the People ſhall live more happily when the ſupream Power is in one, and the Perſon by the Laws of the Country is known, whereby no Room is left for Diviſion and Faction, concerning that ſingle Sovereign? Or, When one Man, being more active and crafty than his Fellows, who ought to have an equal ſhare in the Authority, raiſes a Faction upon ſome plauſible pretences, and under the colour of ſerving his Confederated Party, perſwades them to be commanded by him, and ſo exerciſes the ſupream Power in an Illegal way: which as it is compaſſed by engaging the People in miſery, under colour of making them more happy; ſo it muſt be kept up by as bad Arts, and an Army muſt be maintained to make good by force what Law cannot juſtify.

Compariſon betwixt a King and Tyrant.

In this manner as the queſtion is to be ſtated betwixt a Lawful King and Tyrant. So if it be enquired whether Monarchy or Ariſtocracy be better; it is not whether a bad King be better than a good Commonwealth conſiſting of the Optimacy: but the Compariſon ought to be betwixt a good King, and a good Ariſtocracy, or betwixt them when both bad. *Firſt*,

Compariſon betwixt a King and a Commonwealth.

Firſt, Therefore it is to be conſidered, That a People may eaſilier have a good King, than a good Nobility (taking Good in a Political Sence, as providing for the Peoples Happineſs;) becauſe the King's Intereſt is the ſame with that of the Peoples, which is a ſtrong State-ſecurity: whereas the Commonwealth of *Greece*, affords us many Examples of Perſons ſelling their Country, and putting their great Councils upon ill attempts, and labouring with their utmoſt cunning, to fruſtrate good Deſigns; becauſe their Dependance upon a Foreign State or Kingdom, was worth much more unto them, than they could hope to gain by honeſt Service to their Country.

Suppoſing both the King and Optimacy be willing to promote the Peoples Happineſs; yet he is more able to compaſs that End, by reaſon he hath a more United Power, and the Execution of all Deſigns depends upon a ſingle reſolve; and therefore may be managed with a certain cloſeneſs and all convenient ſwiftneſs, ſo that good Councils ſhall be firſt diſcovered in their effects: Whereas a great Body move ſlowly, and moſt times the opportunity of Doing is gone by, while they are but half way in their deliberation.

More Inconveniences under Commonwealths, than under Kings, *cæteris paribus.*

Beſides, as there are many Advantages peculiar to Monarchy (as in theſe three Chapters I hope I have evinced) ſo there is not one Inconvenience, to which a People, living under Ariſtocracy, are not ſubject in a much higher Degree than they are under Monarchy. For ſuppoſing a King cruel, yet one Man's Cruelty cannot reach ſo many as that of Multiplied Oppreſſors, when every one takes their peculiar Province to fleece, or exerciſe their Lordlineſs over, according as their Eſtates or Intereſts are divided.

The Covetouſneſs likewiſe of Senators is more devouring, becauſe we may feed one Fire with leſs Expence of Fewel than five Hundred.

A Princes profuſe Largeſſes to his Favourites, is infinitely over-balanced, by ſo many providing for their poor Kindred, and making Friends, and purchaſing Dependants. This very thing muſt likewiſe be practiſed by Senators, for underproping their ſeveral reputations, hiring Advocates to plead for them in their abſence; purchaſing of Votes in their private concerns, and obtaining of Offices, Places and Eſtates for themſelves and their Relations: So that theſe muſt require more conſiderable Supplies from the People (who muſt be ſqueezed every time any ſingle Grandee wants) than are neceſſary to nouriſh the Liberality of a Prince, who hath a large Patrimony, ſtanding Revenue, and places of Honour and Profit to gratify his Servants withal. The wiſeſt States having made ample allowances to their Princes, to enable them to beſtow Favours according to Merits or liking.

Another Objection anſwered.

Some think that of *Eccleſiaſtes* (*Wo to thee, O Land, when thy King is a Child!*) a ſtrong Argument againſt Monarchy, becauſe this Calamity is not incident to a Senate, becauſe they are

are not ſubject to Nonage: But the place rightly underſtood (ſaith a learned (*i*) Writer, whom I have epitomized in the Parallel) is a very full Confirmation of the happy Condition we have reaſon to expect under Monarchy, and of the Calamities and Woes which probably attend an Ariſtocracy. For the cauſe of thoſe Miſeries foretold is plainly thus: A King during his Infancy, being not able perſonally to Rule, the Government is managed by the Nobles; and thence come Factions, and all the Miſchiefs that accompany them.

(*i*) *Idem, p.* 23.

To cloſe therefore this Chapter, we may conſider, that Kings have no Rivals whom they fear, and muſt keep under, as Governours of Commonwealths have; which is no ſmall Bleſſing to a People.

Kings. as Proprietors, take all the care poſſible (ſaith a very (*k*) Learned Author) to improve their Dominions; whereas Republicans are as Tenants, mind nothing ſo much as their private Profit: and the very Pretenders to Liberty and Property, in this and the laſt Age, have been the great Cheats of the Nation. They, when raiſed to govern, grew inſolent; whereas Princes are ſtill the ſame, and their Paſſions riſe not, becauſe their Fortunes do not.

(*k*) *Jus Regium, p.* 58.

The prevailing Factions in Commonweals, ſpare none that oppoſe them, having no conſideration of them, but as Enemies: whereas Kings pity even Rebels, as conſidering them ſtill as their Subjects; and though I cannot ſay with my (*l*) Author, of one Year, yet I may ſay of the whole time of the Uſurpation, That more were murthered and ruined in that Reforming Age, than ſuffered by the *Great Mogul*, and King of *France*, in that ſpace of time; and more Severity was exerciſed by thoſe Reformers, than by all the Race of our Kings theſe Six hundred years. And whatever Evil Miniſters Kings are ſaid to have, yet what that Judicious Author notes of *Scotland*, we may ſay the like of *England*, That after they had taken from the Bleſſed King his Prerogative of chuſing Judges and Councellors; the Parliament did the next year put in (I will not ſay with him, the greateſt Blockheads and Idiots in the Nation but) men of much meaner Parts, and more corrupt and unfit, either for knowledge, or the upright diſpenſing of the Laws, Juſtice and Equity, than any Age had known.

(*l*) *Idem.*

I have diſcourſed of this Head before, and ſo ſhall ſay no more, but that as well as in Antient times, the unequal Diſtribution of Juſtice hath been noted; ſo the Severity of the State of *Venice* againſt their Nobles, and the executing Men without Citing or Hearing, upon meer Jealouſies, induced a wiſe *Spaniard* (who hath collected the Arbitrary Courſes practiſed and allowed in that State) to ſay, That there is leſs of Liberty there, than under the worſt of Monarchies. And for the State of *Holland*, it hath been more than once obſerved, how ingrateful they have been to all their Neighbours, who have aſſiſted them in their greateſt need (and with what a Jealouſie

they treat the Prince of *Orange*, whose Ancestors setled them in the Possession of what they have) as well as to the Crown of *England*, is obvious to common Observation. By them their Allies have been unworthily deserted; In the matter of Trade no Pact or Faith hath been kept. In their Country, Mint and Cummin, Coleworts and Herbs are excised; nothing worn, nothing fed upon or necessary for Humane Life, but pays something to their Exchequer: You pay a Tribute for the Ground you walk on, for the Rivulets you pass on; only they have not yet found out a Tax upon their Foggy Air.

CHAP. X.

The Character of a good King in general.

BEfore I come to treat of the Sovereignty, I think it convenient to discourse of the usefullest Qualifications of Monarchs, and the benefits that will redound to themselves and their Subjects thereby.

(a) *Ethic.* 8. *c.* 10. *Polit. lib.* 3. & 5. *c.* 4. Difference of a King and a Tyrant.

The (a) Philosopher, in several places, compares a King to a Parent and Shepherd, but a Tyrant to a Lord over Slaves, and a Wolf. The One in his Government having a special Regard to the Peoples Benefit: the Other governing without or against Law, *pro nutu & arbitrio*; reducing all things under their absolute will and Power, in such a πλεονεξία, as is unhappy to their People, and in the Conclusion to themselves.

The ancient Authors Description of a Good King.

More particularly the same (b) Philosopher describes a good King to be one, that no ways governs Tyrannically, but as the Master of a Family with a Royal mind, not challenging or appropriating all to himself, but procuring good for, and defending, his People and Subjects, in the course of his Life, using Moderation in all things: Affable to his Nobles, and in Company desirous to show himself of easie Access, sweetning his Government to his People, by his gracious Declarations. By these, saith he, (c) his Empire will not only be more Beautiful, more Esteemed, and more Fortunate, but more Durable; being not dreaded or envied of his Subjects, but commanding over the good, and not over broken and depressed Spirits.

(b) Δεῖ μὴ τυραννικὸν, ἀλλ' οἰκονόμον καὶ βασιλικὸν εἶναι φαίνεσθαι τοῖς ἀρχομένοις· καὶ μὴ σφετερικὸν, ἀλλ' ἐπίτροπον, &c. *Polit. l.* 5. *c.* 11.

(c) Ἐκ δὲ τούτων ἀναγκαῖον, ὃ μόνον τὴν Ἀρχὴν εἶναι καλλίω καὶ ζηλωτοτέραν τῷ βελτόνων ἄρχειν καὶ μὴ τεταπεινωμένων· μηδὲ μισόμυθον· καὶ φοβόμυθον διατελεῖν, ἀλλὰ καὶ τὴν ἀρχὴν εἶναι πολυχρονιωτέραν. *Ibid.*

Such Princes use a moderate just Government according to the Laws, (*more Majorum*) contented with Power sufficient to support the Government; no ways injurious to their People, but willing that some things should not be in their Power, that they may the more securely perpetuate, what they enjoy. For (d) they that are Lords over fewer things, necessarily subsist the longer.

(d) Ὅσῳ δὲ ἂν ἐλαττόνων δεσπόσιοι, πλείω χρόνον ἀναγκαῖον μένειν πᾶσαν τὴν Ἀρχήν. *Ibid.*

So

So it is recorded of (e) *Alex. Severus*, that when his Wife *Menemia*, Daughter of the Conful *Sulpitius*, and Niece of *Catulus*, told him, That he had made his Power gentler and more despicable, by not taking State enough upon him, and Governing more gently. He gravely answered, That it was more secure and durable. The very same, *Aristotle* relates of *Theopompus*.

(e) Lamprid. in vita. *Molliorem sibi potestatem & contemptibiliorem, sed securiorem & diuturniorem.*

Therefore, saith a grave (f) Author, That State of a Commonweal is to be desired, and is most firm, in which private Persons live Holily and unoppressed, or Inoffensive, and Justice and Clemency are in full Vigor by the Princes care.

(f) *Ille Reipublicæ status optabilis & firmus est, in quo & privatim sanctè intuxieq; vivitur, & publica Justitia & Clementia vigent.* Polyb. lib. 6. Histor.

Therefore (g) *Musonius* in *Stobæus* saith, a Prince should so deport himself in his Government, That he should rather be revered and honoured, than feared by his Subjects.

(g) *Verendus potius subditis est, quam metuendus.* Stobæus.

The excellent (h) *Greek* Historian tells us, That the Practice of Tyrants is to Lord it over the Unwilling, by Terror and vitious Exorbitance, being always engaged in mutual hatreds betwixt him and his Vassals: But on the contrary, Kings doing good to all, with Liberality and Clemency, govern those that freely are subject to them, living in a mutual Benevolence and Charity with his People.

(h) Τυραννὶς μὲν γὰρ ἔργον ὄντι τὸ χαλεπῶς τεθυμῶσθαι τῷ φόβῳ δεσπόζειν ἀκουσίως μισέμενον καὶ μισοῦντα τοὺς ὑποτεταγμένους. Βασιλέως δὲ τὸ πάντας εὐεργετεῖν διὰ δὲ εὐεργεσίαν καὶ φιλανθρωπίαν ἀγαπώμενον ἑκόντων ἡγεῖσθαι καὶ προστατεῖν. *Polyb. Hist. lib.* 5.

It is by such a Deportment of a Prince to his Subjects, that a Prince receives much inward Contentment. For as the Painter delights when he hath finished a curious Piece, and every Artist when he hath shewed great Mastership in his work; so a Prince, when he hath, by his prudent, wise and merciful Government, made his Reign Prosperous and Happy to his Subjects, cannot but receive the greatest satisfaction to himself, and will thereby acquire a most glorious and durable name.

The Satisfaction and content a good King takes in his Administration.

It was a Kingly saying of (i) *Theodahad* in *Cassiodorus*, That whereas Kings can do all things, they think, and believe those things only to be lawful for them to do, which are Praise-worthy.

(i) *Cum omnia possumus, sola credimus licere nobis laudanda.* Variarum lib. 50.

As the Pilot (saith the Orator) designs a prosperous Voyage, the Physician Health to his Patient; so the Supreme Magistrate should have care of his Subjects, the (k) Lives of them, and their Fortunes, for that End being committed to them.

The Subjects Benefit the End of good Kings.

(k) *Beata civium vita præposita.* Attic. l. 8. c. 11. & 5. de Repub.

Hence *Tacitus* commends that Prince, who lives with his People as a Parent with his Children; when neither to his own Breast, Closet, or (l) Family, any Access is made by Ambition, or in which any thing is Mercenary. So we find in the same Judicious Historian, the advice of *Galba* to *Piso*, when he had adopted him, was, That the surest and shortest Rule to sort good from evil, was to weigh with himself (m) what under another Prince he would have allowed or blamed. Therefore *Nerva* gloried most, That he had done nothing in his Government, whereby he might not safely live, although he should lay down his Empire, and live again a private Life. So *Trajan* said, He would approve himself such an Emperor over his Subjects, as He, being a private Man, would have wished the Emperor to

(l) *Nihil in penatibus ejus venale aut Ambitioni pervium.* 13. Annal. initio.

(m) *Cogitare quid aut nolueris sub alio Principe, aut volueris.* 1 Histor.

have been. Therefore (*n*) *Pliny* ſo highly commends the Peoples Vows for him, *quod bene Rempublicam & ex utilitate civium, rexerit.* Thence the ſame (*o*) *Panegyriſt* commends him, That he did not only conſider himſelf to be mortal Man, but that he was appointed to govern Men, not Brutes.

(*n*) *Panegyr.*

(*o*) *Non minus hominem ſe, quam hominibus præeſſe cogitet.* Ib.

It was to the fore-mentioned *Nerva* that *Fronto* ſaid,(*p*)It was a great Evil to have ſuch a Prince under whom none can have Liberty; but it is worſe when every one hath Liberty to do as he liſt,the one diſcovering a very Tyrannical Diſpoſition,and the other a great remiſſneſs and negligence in Government. Therefore (*q*) *Tacitus* adviſeth that a Prince's Eaſineſs, and too much Lenity weaken not his Authority, or his too great Severity leſſen the Love of his Subjects.

(*p*) Κακὸν μὲν εἶναι αὐτοκράτορα ἔχειν, ἐφ' ᾧ μηδενὶ μηδὲν ἔξεστι ποιεῖν, χεῖρον δ' ἐφ' ᾧ πᾶσι πάντα. *Dio. in Nerva.*

(*q*) *Nec tibi,quod rariſſimum, aut facilitas Auctoritatem, aut ſeveritas Amorem diminuat.* Vita Agricolæ.

Lipſius (*r*) gives us this noble Character of a good Prince, That being raiſed to the higheſt Eminence, deſires not to be accounted more great than good, and mingles two the moſt different things, Power and Moderation; whom his Subjects in his Progreſs look upon as a beneficial and comfortable Divinity, ſo that the People attemper'd with Fear and Love, with interchangeable Sentiments, doubt whether they ſhall ſalute him as their Lord or Parent.

(*r*) *O vere juſtum & legitimum illum Principem! qui in ſummo faſtigio non minus magnus quam bonus audire deſiderat, & duas res diverſiſſimas, potentiam ac modeſtiam miſcet! quem prodeuntem certatim velut beneficum quoddam Numen aſpiciunt inter amorem timoremq; medium.* Præfat. ad Imperator. Reg. &c.

All Princes muſt neceſſarily be moſt dear to their People (ſaith the (*s*) Chancellor to the Parliament, *Anno* 1571.) dearer than their own Lives, when they by their Actions demonſtrate that they make the whole Scope and deſign of their Government the Proſperity of their People. Among the chiefeſt of which Benefits, that of Peace is to be moſt valued, as being the end and mark that all good Governours direct their Actions to. In another place he makes it a ſure ſign of good Princes, when they wiſh themſelves all the good qualifications and fittedneſs for Government, and all the Vertues of the greateſt Princes for their Subjects good; this being a full Demonſtration how precious and valuable the ſafety and quietneſs of their Subjects are to them.

(*s*) MS. Speech, 1571. Such Princes dear to their People.

Degrees of Sovereign Honour.

The learned Lord Chancellor *Bacon* marſhals the degrees of Sovereign Honours under five Heads,every one of which are as ſo many Characteriſticks of great and good Kings. Firſt the (*t*) Layers of the foundations of Empires, as *Romulus*, *Cyrus*, *Cæſar*, *&c.* (*u*) Secondly the Founders of their Laws, or Lawmakers; who by conſtituting good Laws, are as ſecond Founders, perpetual Princes, becauſe they govern by their Ordinances after they are tranſlated from this World. Such were *Solon*, *Lycurgus*, *Juſtinian*, and others. (*w*) Thirdly, ſuch as have freed their People, and delivered their Country from Servitude,or have put an end to,and compoſed long civil Wars, as *Auguſtus*,*Veſpaſian*,our King *Henry* the Seventh, and the Fourth of *France*, and moſt eminently our late Royal Sovereign. (*x*) Fourthly ſuch as by honourable ways enlarge their Territories, or make a noble Defence againſt Invaders. Laſtly, ſuch who

(*t*) Eſſays of Honour and Reputation. 1. *Conditores Imperiorum.*

(*u*) 2. *Legiſlatores perpetui Principes.*

(*w*) 3. *Liberatores & Salvatores.*

(*x*) 4. *Propagatores vel propugnatores.*

who reign juſtly, and make the Age good wherein they live, therefore ſtiled Fathers of their Country; ſuch both was and is our late and preſent Gracious Soveraigns.

So that ſuch a Prince as others deſcribe according to their Wiſh, or as an Exemplar, the *Engliſh* Nation, and all his Majeſtie's Subjects, above all other Kingdoms in the World, have been and are Bleſſed with, under the Reigns of two ſuch unparallell'd Royal Brothers. We may juſtly give our late Sovevereign of immortal memory, that Character which we find in *Arniſæus* as the Idea of a good Prince, That leaving entirely to his Subjects their Properties, governed according to God's, Nature's and his own Laws founded upon Equity and Juſtice; or that of (y) *Hadrian's*, that ſo managed his Government, That all might know that he ſtudied the Peoples, not his own private Profit.

Character of King *Charles* the Second.

(y) *Rem populi eſſe, non ſuam privatam.* Dio. vita Hadriani.

Surely we may hope for great happineſs under our preſent Sovereign; who hath not only been a Copartner in his Royal Brother's ſufferings, but a Co-adjutor in the management of his great Empire; and hath ſo ſignalized himſelf in the hazzard of his Life and glorious Atchievements for his Country, and is endowed with all the Heroic Accompliſhments that ennoble Princes in the Records of Fame: ſo that we have the greateſt Moral aſſurances (if we diſturb not his Reign by Sedition and Rebellion) that he will out-go moſt of his Anceſtors in the proſperous Government of his People, as well for their Glory, as their Peace and Tranquillity.

Character of King *James* the Second.

CHAP. XI.

The Care of Religion a duty incumbent upon Kings.

IT is not enough to give a Character of a good King in general; but we muſt deſcend to Particulars, and firſt of his Care of Religion, according to that of (a) *Ariſtotle*, That in all Government the firſt and principal Concern of a Prince, is to take care of things Divine. For according to the (b) Stoick, It becomes him that is the Beſt, to be worſhipped by the Beſt; and that the great Sovereign of the Univerſe be worſhipped by his Earthly Vicegerents.

For of old it hath been noted, That many advantages both accru'd to the Sovereign and People, when the Prince was truly Religious.

Therefore the (c) Philoſopher tells us, That it is the duty of the ſupream Governour principally to take care of thoſe things which appertain to the Deity: for thereby the People are more obedient to their Princes, as not fearing injuſtice from them.

Religion in a Prince, his Duty and Advantage.

(a) Πρῶτον μὲν θεῖον ἐπιμέλειαν καλῶσαν ἱερατείαν. *Polit. lib. 7. c. 8.*

(b) Δεῖ γὰρ τὸ ἄρειον ὑπὸ τοῦ ἀρείου πιμᾶσθαι, καὶ τὸ ἡγεμονεῦον ὑπὸ τοῦ ἀγεμονεύοντος. Diog. *apud Stobæum.*

(c) Ἔτι δὲ τὰ πρὸς τοὺς Θεοὺς φαίνεσθαι ἀεὶ σπουδάζοντα διαφερόντως· ἥττον τε γὰρ φοβεῖνται τὸ παθεῖν τι ἄδικον ὑπὸ τῶν τοιούτων, ἐὰν δοκῶσιν εὐσεβεῖς νομίζωσιν εἶναι τὸν Ἄρχοντα, καὶ φρονίζειν τῶν Θεῶν· καὶ ὑπηκοώτερον ἥττον ὡς συμμάχους ἔχοντι καὶ τοὺς Θεούς. *Polit. l. 5. c. 11.*

For

For that it is to be supposed, that he that is Pious and Just, will not do an Unjust and Impious Action; and by it he is more secure in the assurance of Protection from the Deity, whereby he may hope for its Defence and Patrociny, from the Seditions and Treacheries of his Subjects, having the Deity to fight for him.

(d) *Omnia prospere eveniunt sequentibus deos, Adversa autem spernentibus.* Lib. 5.

Consentaneous to which, is what (d) *Livy* observes, That all things happen to them prosperously that follow the Gods, and as unprosperously to them that despise them.

Upon the same Ground it is that the Orator saith, The *Romans* had not conquered the *Spaniards* by their Numbers, or the *French* by their Strength, the *Carthaginians* by their Stratagems, or *Grecians* by their Arts, nor the *Italians* and *Latines*, and their Nation and Land, by their Native and Inbred Wisdom; but by Piety and Religion, and (e) by that Wisdom alone, that they understood all things to be governed by the Deity, they had overcome People and Nations.

(e) *Atque hac una sapientiâ, quod Deorum Immortalium numine omnia regi, gubernarique perspeximus, gentes nationesque superavimus.* De Aruspic.

Agreeable to this Affirmation, is what we find recorded of *Numa*, That his care of Religion was the chief cause of the succeeding Felicity of *Rome*. For as the (f) *Florentine* Secretary observes, That *Romulus* exercising his People wholly in Military Affairs, his Successor *Numa*, finding he had to deal with a Fierce, Rude, Cruel and Ungovernable People, thought the way to attemper and soften their minds, was to devise some Religious Institutions; which being once given credit to, might make them more pliable to Government. Therefore (g) *Livy* saith, That of all things, he thought the fear of the Gods to be the most efficacious means for the ordering the unskilful Multitude, rude in that Age. And (h) *Tacitus* tells us, That with Religions and Divine Laws he yoaked them in obedience: and so intent he was in the Observance of the Service to the Gods he had introduced, that *Plutarch* tells us, That he being one time Sacrificing, was told that the Enemies were advancing against him, but he would not desist, but returned (i) Answer, That he was performing a Divine Work, and he would not leave till he had finished it.

(f) *Machiavel's Disc. lib.* 1. *c.* 12.

Usefulness of Religion to civilize Subjects.

(g) *Omnium primum ut rem ad multitudinem imperitam & illis seculis rudem efficacissimam, deorum metum injiciendum ratus est.* Lib. 1.

(h) *Numa Religionibus & divino jure populum devinxit.* 3. Annal.

(i) *At ego rem divinam facio.* Plutarch. in vita Numæ.

Numa's Fiction.

It is by (k) *Livy* noted of this *Numa*, That he was forced to use some little Arts to possess the People with some Awe and Reverence to the Religious Worship he appointed. For he saith, that finding, that without some shew of a Miracle, these new Religious Institutions would be difficultly embraced by such a sort of Rude People, He pretended he received them from the Inspiration of the Nymph *Ægeria*. In the like manner it is reported, that *Sertorius* (to establish his manner of Religious Worship, and to obtain the firmer Obedience to his Command) pretended he conversed with an Hart inspired. It is notoriously known, how the greatest of Impostors *Mahomet* palliated his Natural Infirmity of the Falling-sickness, with the subtil Fiction that he was transported at such times to Heaven, and received the Instructions for his *Alcoran* there: and having taught

(k) *Qui cum descendere ad animos sine aliquo commento miraculi non posset, simulat sibi eum Dea Ægeria congressus nocturnos esse, ejus se monitu quæ acceptissima diis essent sacra instituere.* Lib. 1.

Mahomet's Fictions, to gain Credit to his Imposture.

taught a Pidgeon to pick Corn out of his Ear, he made uſe of that to delude the wild *Arabs*, telling them, It was the Holy Ghoſt, which at ſuch Seaſons revealed to him certain hidden Myſteries.

From hence we may learn how great Deference hath been paid to Princes, who have pretended Obedience to the Supreme Being, or had Converſation with Celeſtial Miniſters, Spirits or Angels; and how uſeful, true and untainted Religion in a Prince muſt be, when the Umbrage of it is owned to make ſo pleaſant and beneficial a ſhade.

The Heathens Zeal for Religion.

Before I leave this Head, I cannot but obſerve what Reſpect ſome Heathens paid to the Religious Worſhip of the Gods, and what Puniſhments have been recorded to be inflicted on thoſe who have profaned their Rites.

When the *Gaules* beſieged the Capitol, (*l*) *Caius Fabius Druſo* would not omit the Cuſtomary Sacrifices, but carrying with him in his Hands, the conſecrated Veſſels (contemning the Danger) paſſed to the *Quirinal* Hill, and the *Barbarians* permitted him to ſolemnize his Worſhip, and to return ſafely to the Capitol.

(*l*) *Valerius Maxim. lib.* 1. *c.* 1.

So (*m*) *Pauſanias*, at the famous Battle of *Platea*, though the Enemy preſſed ſore, would not fight till he had a lucky Omen by his Sacrificing.

(*m*) *Herodotus, lib.* 9.

(*n*) *Joſephus* tells us, That *Pompey* the Great, when he had taken *Jeruſalem*, and entred the *Sanctum Sanctorum*, although he found a Table of Gold, a Sacred Candleſtick, and many other Veſſels, and two Thouſand Talents of Silver; yet he touched nothing thereof, but cauſed the Temple to be purged, and the Sacrifices to be offered according to Law.

(*n*) *Antiq. Judaic. lib.* 14. *c.* 8.

The Chriſtians being about to build a Chappel at *Rome*, wherein to perform Service to Almighty God, were hindred by ſome claiming the Ground. The matter was brought before *Alex. Severus* the Emperor, who determined, That the things which concern the Gods, ſhould be preferred before things that concern Men; and ſo allowed the building the Chappel, ſaying, That though their God was unknown to them at *Rome*, yet he ought to have Honour done him, if but for that Reſpect alone, that he bore the Name of a God.

All which, and many more Inſtances which may be given, ought to teach Chriſtian Princes to perform a greater Veneration to the true God, than the Heathens did to their falſe and imaginary Idols. As to the Examples of Signal Diſaſters that have happened to Princes and others, who have ſacrilegiouſly robbed the Shrines of the very Heathen Gods, or uſed thoſe feigned Deities contumeliouſly, diſcovering thereby an Atheiſtical Temper; there are many Inſtances recorded in ſuch Writers, as in other things are generally credited.

Diſaſters hapning to ſuch as contemned the Heathen Gods.

It is reported of (*o*) *Agathocles*, that exacting fifty Talents of Silver of the *Liparenſes* (which they could not pay without taking ſomething conſecrated to *Æolus* and *Vulcan*) in his return,

(*o*) *Diodorus Siculus, lib.* 20. *p.* 698.

return, the ten Ships which carried the Money, were daſhed in Pieces by Storm: by which it was ſaid *Æolus* had his revenge, and *Vulcan*'s followed after, for that *Agathocles* was burnt alive.

(p) *Herodot. lib.* 3. *p.* 887.

(p) *Cambyſes* King of *Perſia*, having conquered *Egypt*, ſmote the Ox that was conſecrated to *Apis*, in the Hip, that he died; but mounting his Horſe to go againſt the Counterfeit *Smerdis*, the ſame Sword he had ſlain the Ox with, fell out of the Scabberd, by the prancing of the Horſe, and he falling upon the point of it, was wounded in the ſame place of the Hip, whereof he died ſhortly after.

I might inſtance in *Nero*'s contempt of the *Roman* Gods, and his ſprinkling the Face of the *Syrian* Goddeſs with Wine: and what an *Exit* he had we know: as alſo, how (q) *Heliogabalus* extinguiſhed the Veſtal Fire, would needs marry one of the Veſtal Virgins, and violated indifferently all the Rites and Ceremonies of Religion in *Rome*; his End was violent, being ſlain by his own Soldiers. But I ſhall only remember what is reported of *Philomelus*, *Onomarchus* and *Phaillon*; who having ſpoiled the Temple of *Delphos*, one of them was burnt alive, another drowned, a third thrown headlong from an high Place; being the three ſorts of Death, the *Grecian* Laws appointed them to undergo that were Sacrilegious. But I will refer the Inquiſitive Reader to *Lipſius* his *Monita*, *Fulgoſius*, *Dinoth*'s *memorabilia*, and others; and only mark, That it ſeems not ſafe out of an Atheiſtical Humor, to contemn even falſe Deities; for that is ſeldom done without ſome Suſpicion that the Perſons who do ſo, ſcarce reverence any Divinity. The ſence of which ought to make us reſent the publick ſtabbing, rending and burning of the Prints, Pictures or Images of our Saviour, and Saints; which ſome too ſcornfully have done.

(q) *Lampridius. Herodian.*

From theſe Remarks, I ſhall now come to conſider ſome of *Machiavel*'s Poſitions about Religion: *Firſt* he (r) owns, That it is neceſſary that a Prince appear careful of Religion, and appear himſelf Religious and Devout.

(r) Of the Prince, *cap.* 18.

Machiavel would have his Prince only pretend Religion.

But he thinks, for a Prince to be truly conſcientious, is not conducible, but rather diſadvantageous to their Deſigns if great, or the Art of Government. This Principle muſt be owned to have been practiſed to the higheſt Improvement by *Cromwel*, whoſe Maſter-piece lay in pretending extraordinary Sanctity, whereby he won more to his Party, than by any other of his Arts, and out-did *Machiavel*'s Original *Cæſar Borgia*.

Anſwer to it.

In Anſwer to which, I ſhall oppoſe firſt the Philoſopher, who, in the place before cited by me in the beginning of the Chapter, in commendation of the Prince's taking Care of Religion, (s) ſaith, It is not fooliſhly and impertinently to be pretended: whereby we may infer, it is to be ſincere and cordial. So *Pomponius* (t) *Lætus* tells us, That *Philippus Arabs* covered his Wickedneſs and Cruelties, by feigning himſelf a Chriſtian, and relaxing

(s) Δεῖ ϑ ἄνευ ἀβελτερείας φαίνεϑαι τοιοῦτον. *Polit. lib.* 5. *c.* 11.

(t) *In Philippo.*

relaxing their Perſecutions, and he reigned but five Years, and He and his Sons were maſſacred by his Soldiers at *Verona*. Indeed it cannot be expected otherwiſe, but that the Judgment of God, and the Indignation of Men, ſhould fall upon ſuch Diſſimulation and Hypocriſie: For however Princes or private Perſons may lacker over their ſpecious Religiouſneſs, yet in ſome times or places it will appear ſo thin, that it will be diſcovered, and at beſt it will bear no reſemblance with pure Gold Foyl.

It muſt not be denied, That Princes have a larger Latitude than others, to conceal their Sentiments of Religion, or to ſet the faireſt Gloſs upon it, as being to guide their Actions in this matter, as well as in ſecular Affairs, ſuitable to the Intereſts of State. But every one will likewiſe acknowledge, that a Prince, who uſeth in this as well as other matters, a generous plain dealing, is valued more by this Standard Coin without Alloy, than thoſe are, who make, as the States of *Holland* do their Third in Silver, mixed with four parts of adulterate Metal, paſs for currant Sterling Coyn. Among juſt Men, ſuch a Prince that deals candidly with God and the World, will find infinite more credit than any Tinſel heart will do.

The Credit a Prince gains that is truly Religious.

But I muſt paſs to another of the *Florentine*'s Paradoxes; he ſaith, The *Pagan* World was kept principally in Obedience by the belief they had in the Reſponſes of Oracles, as that of *Jupiter Ammon* at *Delos*, or *Apollo's* at *Delphos*, &c. or by the Prognoſticks of the *Augurs*; and that, when once Men began to ſleight theſe, they neither believed God nor the Devil, but became as ungovernable as unchained Slaves: and in another (*w*) place adds, That the cauſe why the Force and Power of Chriſtians is leſs than that of the *Grecians* and *Romans*, was in the difference of their Religion: For that the Chriſtian Religion makes the Honour of the World contemptible, and of little Eſtimation, whereas the *Gentiles* eſteemed Honour to be the Soveraign good, which to obtain, they had an exceeding great Fierceneſs and Hardineſs in all their Deeds and Enterprizes; and that the Heathen Religion promiſeth no Happineſs, but to ſuch as having fought for their Prince, Country and Commonweal, were loaded with Glory and worldly Honour: whereas the Chriſtian Religion promiſeth bleſſings to ſuch as are humble and contemplative, and to thoſe which deſpiſe moſt the Goods and Honours of this World: and further adds, That the Chriſtian Religion hath conducted and brought the World into that Weakneſs and Feebleneſs we ſee it in, delivering it as a Prey to the wicked and barbarous People; becauſe all Chriſtians, to take the way to Paradiſe, diſpoſe and arm themſelves, rather to receive Blows, than to give or take Vengeance. So that to him it ſeems, That the thing which makes Chriſtians ſo effeminate and cowardly, proceeds only from this, That they eſteem more of an Idle and Contemplative, than an Active Life.

(*u*) Diſcourſe, *lib.* 1. *cap.* 12. *Machiavel*'s Opinion of the Benefit of the Heathen Religion.

(*w*) *Id. lib.* 2. *c.* 5.

The Anſwer.

In anſwer to all which I do own, That the Oracles and *Augurs* had ſome Influence upon the People; but we muſt likewiſe yield, That they were often Inſtruments and Tools fitted by Princes to carry on ſome deſigns, to give Courage to their Soldiers, and disheartning to their Enemies; and that God in the Machine was oftentimes a Prince's Spring that lay there.

As to the Rites and Ceremonies, whatever Power they had to influence Mens Minds to Obedience and Duty to Governours, and to ſtimulate and excite them to great and glorious Actions; the ſame Motives and Inducements we may find in the Chriſtian Religion, and better bottomed.

That there is ſomething elſe beſides bare Forms, Modes, and Schemes of Religion, that ought to be countenanced and cheriſhed by Princes, and which is very conducive (not to make any Compariſons) to the ſupport of Government, I will now endeavour to prove.

Concerning *Numa Pompilius.*

(x) *Livius, lib.* 40. *Decad.* 4.

Firſt therefore let us conſider what is related of *Numa.* It is ſaid he appointed divers Ordinances concerning Prieſts, and ſeveral Ceremonies, whereof ſeveral Rolls were found in his (*x*) Sepulcher *Anno V. C.* 574. in the Conſulſhip of *Lucius Manilius* in a Stone Coffin, one part *Latin* and the other *Greek.* Theſe Books being ſeven in all, by order from the Conſuls and Senate, were peruſed by *Quintus Petilius*, who made ſuch a Report of them, that according to *Livy*, they were decreed to be burnt, as of no great account; and beſides, judged pernicious and damageable to the Commonwealth, by bringing that Religion into Uſe, which was like to bring great (*y*) alterations in the preſent Rites.

(y) *Cum animadvertiſſet pleraque diſſolvendam Religionem eſſe.* Ibid.

Valerius Maximus gives ſomething a different account; for he ſaith the *Greek* Books only (*z*) of the Diſcipline of Wiſdom were burnt, for that they were judged in ſome reſpects to diſſolve Religion. For, ſaith my Author, the Ancients would preſerve nothing in this City by which the Minds of Men might be withdrawn or led aſide from the Worſhip of the Gods.

(z) *De diſciplina ſapientiæ, quia aliqua ex parte ad ſolvendam Religionem pertinere exiſtimabantur: noluerunt enim priſci viri quicquam in hac aſſervari civitate, quo animi hominum a deorum cultu avocarentur.* Lib. 5. de Religione, num. 12.

From this Story I ſhall firſt mark, *obiter*, that it ſeems for want of the engraving theſe Inſtitutions of *Numa* concerning Religion, in Braſs, as the *Roman* Laws were, though the ſucceſſive Prieſts had the ordering them ever ſince; yet there was that alteration made in that long interval of time in the Rites and Ceremonies, from what he had inſtituted, that to have reduced them to their practice was like to un-hinge all their preſent Eccleſiaſtical Polity; and ſo the Senate, Conſuls and Prieſts thought it more adviſeable to burn and annihilate them, than to diſorder the preſent Eſtabliſhment.

Secondly, We may note, that the Senate and Conſuls took care that nothing ſhould be expoſed to the People (how ſacred a Relique ſoever) that might enervate or debilitate Religion.

(a) *Dionyſ. Halicarnaſſæus, lib.* 11.

Now we may further note out of a judicious (*a*) Hiſtorian, That *Numa* built a Temple to Faith, where he eſtabliſhed many

ny Ceremonies to induce People to reverence Faith, and to fear Perjury; and ordained likewiſe upon Controverſies happening among Parties, they ſhould be bound to go to the ſame Temple, and there with certain great Ceremonies ſwear the points of their Conteſts. He alſo further declared that thoſe who uſurp'd upon the Limits of others Poſſeſſions, were not only to be puniſhed here, but were doomed to Torments in Hell; to the end that every Man might be afraid to ſeize on the Goods of another Mans.

The good things *Numa* eſtabliſhed in order to Government.

Theſe therefore I look upon as the Fundamentals of civil Religion, in the rendring ſo venerable the Faith by Oaths, whereby not only Allegiance to the Prince, but Society was eſtabliſhed upon that firm Baſis of mutual Confidence: and by the ſecuring Propriety, the whole Compages of Government was preſerved.

We ought likewiſe to conſider that there are moral Vertues which conciliate ſuch a Reverence to the Practiſers of them, that they are great helps to preſerve and make flouriſhing every Kingdom and Commonweal, and which conſtitute a conſiderable Religious Portion of civil Government; and when Princes and People exerciſe them, both live happilier, than when without them, great Sanctity and Devotion are only pretended.

Moral Vertues very uſeful to Government.

The Vertues I put in the Balance againſt Bigotry in Religion, are Juſtice, Temperance, Charity, Fortitude, Magnanimity, which are branched out into many flouriſhing Boughs, that bear the Golden Fruit upon them; ſuch as theſe, Not to do to another that which we would not have done to our ſelves; To live contentedly in our Station; To be obedient to our Magiſtrates and Superiours; To live in Charity with all Men; To be Compaſſionate to the Poor and Needy; To give no evil Example in any ſort of Debauchery; To conſider that we come into this World to live according to the rules of Life, the Sovereign Being of all hath pleaſed to reveal; That we do nothing here which may forfeit our more durable Inheritance in the other World.

Better than Hypocritical Holineſs.

Theſe were the Buttreſſes of Government in the Heathen World, when the whole train of Moral Vertues without Hypocriſie and Diſſimulation were practiſed: and can *Machiavel* or any of his Diſciples find that the ſame things are not preſſed as a duty upon all in the Chriſtian Religion; there ſeeming to me this only advantageous difference, That the Foundation and Baſis upon which theſe Moral Vertues reſt in the Chriſtian Religion, is more firm, more regular, and more curiouſly hewen and poliſhed, and more conſentaneous to the Dictates of right Reaſon, in that they are implanted and promulged as ſtanding Laws by one God Omnipotent; than in the multiform, jarring Polytheiſm of the Heathens, who for every different Species of things, or qualifications of Beings, introduced a preſiding Spirit.

That Religion doth not diſ-ſpirit Men.

In anſwer to the ſecond Plea of the Secretary, That our Religion hath diſ-ſpirited Chriſtians; I think every one will be furniſhed (out of the Armory of his own Experience, or the peruſing of antient and modern Hiſtories) with Shield and Buckler againſt ſuch falſe Thruſts, and will own that there have been as conſiderable and glorious Atchievements performed by Chriſtians, as by Heathens: as may be inſtanced in *Conſtantine* the Great, *Theodoſius*, *Valentinian*, *Juſtin*, *Charlemain*, *Scanderbeg*, and infinite more modern Chriſtian Princes, who neither yield for Manhood, Valour, or Conduct, to *Turks* or *Pagans*: and how Patient and Meek ſoever Chriſtianity teacheth Men to be; yet it no ways hinders Subjects from uſing offenſive or defenſive Arms, when commiſſioned by Lawful Authority; nor diſcourageth adventuring of Life for the defence of Kings, or their Countries; nor is it an Extinguiſher of Endeavours to ſerve God the Soveraign, or his People, in the Honourableſt Imployments.

True Piety leſſened by ſubtile Diſputes.

It muſt be confeſſed, that ſince Religion hath been reduced from Precepts and Axioms to Syſtems, and that the practical part of Juſtice, Moral Vertues and Honeſty, were no longer in Eſteem, than as they were found ſubſervient to the promoting Speculations; there hath been a way found out to render theſe fundamental and ſubſtantial Qualifications of leſs value in very good Men, unleſs withal they added ſome quaint Notions that might ſublime their Heatheniſh Moralities (as they call them) into Elixirs and quinteſſences of Religion: as in our late Times, If one could not give a certain Diagnoſtick when Grace was wrought in him, he was not fit for reforming Employment; Men being more diſtinguiſhed by Teſts and Oaths, than by good Manners.

By which we forgo the Subſtance of Moral Piety for a fleeting Shadow; and many are ſo bigotted in their ſeveral Sentiments, that it is a more arduous task of late, than formerly, for Princes to comport themſelves in this particular, ſo as to keep in one Uniformity, Subjects of ſo different Perſwaſions, whereby they may command that obedience Subjects ought to pay to their Sovereigns.

To find Expedients, or offer any directions to Princes in this Caſe, were to involve ones ſelf in an endleſs Labyrinth, and diſcover an unpardonable Preſumption; the Difficulties being very great, if not inſuperable, how to frame Laws that ſhould combine ſuch varieties and diverſities of Opinions in one Yoak, Order or Rule, without ſuch an univerſal and abſolute Monarch, as ſcarce in Idæa, much leſs in Practice can ever be.

I ſhall therefore concern my ſelf no way in tugging at the end of that Saw of Controverſies, which (how pleaſant ſoever it may be to ſuch as have an over-weening Opinion of their Knowledge in ſuch Subtilties) is very harſh and ungrateful to my Temper.

This one *Hypotheſis* or *Poſtulatum*, however, I hope few will deny, That ſince Monarchy is the Eſtabliſhed Government in his

his Majeſtie's Dominions, and however maliciouſly and potently aſſaulted in our Memories; yet never can be altered here. Princes by ſmall ſearches into the aptitude of the ſeveral Schemes of religious Worſhip and Government, may ſoon find which is moſt agreeable to the Conſtitution of the Monarchy, and will be moſt ſubſervient to it. In which particular, the Church of *England*, as eſtabliſhed by Law, in its Doctrine and Diſcipline, and all the true Members of it, and the Subjects of all Conditions, who act according to the Principles of it; have obtain'd a Royal and Gracious Character, founded upon the conſtant Experience the Kings of *England* have had, That upon all the moſt critical trials, the Members of it have ſtood firm to the Crown, even when worn by Princes of different Religion.

The Government of the Church of *England* agreeable to the *Engliſh* Monarchy.

Therefore till other Forms, practiſed in the late times, can give as undeniable Proofs of their unconditionate Loyalties; I think it but reaſonable they ſhould allow His Majeſty liberty to conſult his own, and the intereſt of his Government, rather than their inconſiſtent Models.

One of the Principles of the Church of *England* (conformable to that of the Chriſtian Religion) is, That it teacheth Obedience to the Soveraign, not for Fear only, but for Conſcience ſake; and all conſiderate (as well as Pious Men) where they are convinced, That it is better to obey God than Man (if any thing ſhould be commanded that would put them upon that Dilemma) will chuſe to ſuffer (if they cannot fly) rather than rebel.

Therefore ſince it pleaſed his Majeſty at his firſt Step to the Royal Throne (which was like that of the riſing Sun diſpenſing innumerable Bleſſings to his People) to expreſs his Royal Favour to the Church of *England*, with ſuch an Encomium of its Members, in that moſt refreſhing Declaration at his firſt Council (which from ſo juſt a Prince carries the Force and Energy of an Act of Parliament as well as of State in it) it ought to bow the Hearts of all Men that deſign not to be Rebels, as one Man to him.

The King's Commendation of the Principles of the Church of *England*, as to Monarchy.

Since which, by the repeated ſolemnity of it to his two Houſes of Parliament, all ſuſpicion of his Majeſtie's ever acting to the contrary, ſo long as the Subjects keep their dutiful Station, is totally removed. His Majeſty alſo hath laid a ſolid Foundation for true Piety in the diſcountenancing and diſcrediting all ſorts of Vice and Debauchery: by which none can doubt, but himſelf as well as his Subjects, will in ſhort time reap happy Benefit according to that of the excellent (*b*) Hiſtorian, Examples have a more durable force than Laws.

(*b*) *Diutius durant exempla quam mores.* Tacitus, 4. Hiſtor.

I ſhall conclude this particular with the famous Story of the Zealots in (*c*) *Judæa*: Thoſe being told by *Veſpaſian* (which Meſſages *Joſephus* himſelf carried to them) that he would change nothing of their Religion, but maintain them therein, and in all their Liberties and Franchiſes; yet under colour, that they

(*c*) *Joſephus de Bello Judaico, lib.* 4. *c.* 5. *& lib.* 7.

The Evils by Rebelling upon pretence of Religion.

they were bound to ſacrifice their Lives in the defence of the Temple, would never hearken to Peace upon any condition whatever: but living upon Forraging, Rapines, Free-booty, and committing moſt cruel Butcheries; *Veſpaſian* found himſelf obliged to arm againſt them, and uſe them with all Extremity. In fine, Thoſe who pretended ſo much the Preſervation of their Religion, committed a Thouſand ſort of Impieties and Cruelties, and themſelves ſet the Temple of *Jeruſalem* on Fire, and at laſt brought utter Ruin to their Country.

I ſhall make no further Application, but that from hence we may learn, *Firſt*, That it was agreeable to Principles of Government, that *Veſpaſian* (though a Prince of a different Religion to the *Jews*) ſhould not alter their Civil or Religious Government: And, *Secondly*, That the utter Extermination of a People and their Religion there, was the Conſequence of the Zelots Rebellion, as to the apparent procuring cauſe; for I enquire not here into the Original cauſe of that Nations Deſtruction, *viz.* The crucifying of our Lord and Saviour.

Wherein the Sovereign's Care of Religion conſiſts.

I come now to conſider wherein a Sovereign's care of Religion conſiſts, which would carry me into a dangerous Ocean, if I ſhould ſurvey all the Rocks, Creeks and Quick-ſands to be avoided in this matter. At the beſt I ſhall find an high rolling Sea, as that in the Bay of *Biſcay*, if I eſcape the difficult and dangerous paſſage betwixt *Scylla* and *Charybdis*.

Firſt therefore, I ſhall conſider the Obligation the *Pagan Romans* thought they had, not to make any Innovation in matters of their Religion, with ſome Reflections upon it. *Secondly*, Conſider the Condition of People under Diverſity of Religions: *Thirdly*, Speak ſomething of the Diverſities of Religion ſprung up in the time of the late War: And *Laſtly*, Something concerning Toleration. But I muſt præmoniſh the Reader, that I intend not to treat of theſe, either as Divine or Stateſman, but only as a Lay-man that loves Order and Peace, *in tranſitu*, as a Parergon.

The *Roman* Heathens not for change of Religion.

Firſt then as to the Heathens, we find that remarkable Advice of (*) *Mecænas* to *Auguſtus*, That he ought to worſhip the Deity in all Methods, and at all times himſelf, according to his Countries Laws, and cauſe others to do ſo: and further adds, That he ſhould reſtrain thoſe that would innovate in Divine things, not for the cauſe only of the Gods; but becauſe thoſe that bring in new Deities, do drive Men to make other dangerous Changes: and from thence, Conſpiracies, Sedition, Conventicles, Cabals, *&c.* which are things no ways conducible to the benefit of Government.

In which we may conſider *Mecænas* to adviſe like a Stateſman, conſidering, that *Auguſtus* had but newly extricated himſelf from a great and dangerous War, for no leſs than the Empire: Therefore it behoved him to make no Alterations in Matters that might endanger the Settlement of his preſent Eſtate. Therefore we find, That *Auguſtus* laid aſide the name of *Triumvir*,

(*) Τὸ μὲν θεῖον πάνῃ πάντως, αὐτός τε σέβ. χῃ τὰ πάτρια, χὴ τὺς ἄλλυς ἡμᾶν ἀναγκάζε· τὺς δ' ξενίζοντάς πῃ περὶ αὐτὰ χὴ μίσει χὴ κόλαζε, μὴ μόνον τῆ θεῶν ἕνεκα, ὧν καταφρονήσας ἐδ' ἄλλυ ἄν τινο τιμήσειεν, ἀλλ' ὅτι καινά τινα δαιμόνια ὑπ' τοιῦτοι ἀνθεισφέροντες πολλὺς ἀναπείθυσιν ἀλλοτριονομεῖν· καὶ τότε, χὴ συνωμοσίαι χὴ συςάσεις, ἑταιρείαι τε γίγνονται, ἅπερ ἥκιστα μοναρχίᾳ συμφέρει. Dio Caſſius, *lib.* 52.

umvir, contented with the Conſulſhip, and for defence of the People with the Tribunitian Authority; which were old Offices the People were acquainted with: and that he attracted the Soldiers good Will to him by Gifts, the Peoples by Proviſion of Food; and all with the ſweetneſs of Peace: ariſing by (*d*) degrees, to draw to himſelf the Imployment and Authority of the Senate, the Magiſtrates and the Laws, none oppoſing him.

(*d*) *Paulatim inſurgere, munia Senatus, Magiſtratuum, Legum in ſe trahere, nullo adverſante.* Tacit. 1. Annal.

How far this is to be imitated by Princes, in the Circumſtances of *Auguſtus*, I leave to others to determine.

As to the general Sentiment, that the Heathen *Roman* Religion was not to be changed: I ſhall content my ſelf with two Authorities of the great Orator, who in one place (*e*) ſaith, That it is the part of a wiſe Man to defend the Inſtitutions of their Anceſtors, in retaining ſacred Ceremonies; and that in all Nations, it is reputed wicked to violate and baniſh our Countries Rites.

(*e*) *Majorum inſtituta tueri ſacris cæremoniiſq; retinendis ſapientis eſt. Patrios ritus migrare aut violare, ubique gentium nefarium ſit.* Cic. de Divinatione.

In another place (*f*) he pronounceth it abſolutely, That all are moved with Religion, and judge their Country Gods which they have received from their Anceſtors, to be worſhipped and retained.

(*f*) *Omnes Religione moventur, & deos patrios quos a majoribus acceperunt, colendos ſibi diligenter & retinendos arbitrantur.* Cic. in Verrem.

I am ſenſible, that if this were yielded to, Chriſtianity would not have been propagated in the World. For if it had not been lawful to alter the ſo long eſtabliſhed Idol Worſhip and Polytheiſm, the Doctrine of Chriſtianity had been ſhut out. But on the other ſide, when I conſider how Chriſtianity was propagated by the working of Miracles, and by the Force and Energy of Conviction upon the Minds of ſuch as would admit the Explanation and Dilucidation of the Doctrine, and the Chriſtians patient ſufferings under the Heathen Perſecutions, and peaceable awaiting till God Almighty diſpoſed the Emperor *Conſtantine*'s Heart to embrace the ſaving Doctrine of our Lord Jeſus Chriſt; I cannot but conceive it fit (as a Primitive, ſo an imitable Example) to follow the Method of perſwading and convincing Reaſon and Judgment, before Changes in Religion are to be attempted; eſpecially ſince the Converſion is not to be from Paganiſm, but concerns Modes of explaining Doctrines, Juriſdiction of ſome Orders and Churches, and ſuch Rites and Uſages, as poſſibly enough Men may be ſaved without arriving at the knowledge of the Eſſentialneſs of them.

Concerning Diverſity of Religions.

The Religions of Mankind are extreamly various, diverſifyed according to the *Genius* of the People, their Education and Intereſts. For as Dominions are circumſcribed, and bear one againſt another, for the preſerving of their reſpective Limits and Bounds, ſo that a kind of Hereditary Hoſtility is continued betwixt them: So we find together with that Native civil Enmity, there is alſo ſome diſagreeing in ſuch Points of Religion, as is ſufficient to keep up the Feud betwixt the Learned Part, as well as the Common People; and the Earth is not more diverſifyed by the large Tracts of Sands in *Arabia*, Chains

Chains of Hills at *Caucasus*, the *Alps*, &c. or with the Ribs of vaſt Rocks, or the Fertile Plains, Pools, Moraſſes and Seas, than it is variegated with Religions; ſo that what is ſacred in one Country, is even piacular in another.

——————*cum ſolos credit habendos*
Eſſe Deos quos ipſa colit——

What Application is to be made of God Almightie's Methods of Providence in this I leave to Divines, whoſe Province it is: Only we may obſerve, ſince the *Roman* Church is obeyed in a large Portion of the World, and Ethniciſm and Turciſm poſſeſs as great Territories, and the different Modes in all theſe (ſome inſiſting on old Uſage, others on Reformations and Refinings) are ſo conſiderable, it is not to be hoped, there can be any Uniformity or Harmony of Religions in the Univerſe.

Therefore it ſeems to be the great concern of Princes in their ſeveral Dominions, to uſe their utmoſt Endeavours, that the great Fundamentals of Religion (which conſiſt in ſolid Piety, Juſtice, Temperance, *&c.*) ſhould be ſtrictly obſerved, and the particular Forms, which, by the Wiſdom of foregoing Ages, have been adapted to the *Genius* of their People, ſhould be protected and defended, and no Innovations made in them upon private Mens Fancies of Reformation, without a publick Sanction.

Fanaticalneſs in Religion dangerous to Government.

As to the third Particular concerning the Diverſities of Notions in Religion, which have been ſpawned in our late Wars, during the Rebellion, when every one pretended, that the Liberty of propagating their ſeveral new found Opinions, was what they had fought for, and purchaſed with the expence of their Blood and Treaſure, we may conſider theſe things following.

Firſt, That when Religion is only ſeated in the Brain, it ſtrangely infatuates, and renders the poſſeſſed difficult to be cured: for it either produceth downright Hypocriſie (which hath Millions of Subſervient Wheedles to accompany it) or the Imagination is heightened, That (as a learned (*g*) Writer obſerves) they think Salvation is only ordained for thoſe of their fine Sculls; the very moſſy Notions of which they think ſufficient cure for the falling Evil: Judging Mankind, till within a Century or ſo, to have been dull indigeſted Maſſes of unthinking Animals; whereas in Truth and Reality, they are the *tubera Terræ*, Inſipid or Poyſonous Fungs, which ſprung up by the Showres of Blood.

(*g*) Mr. *Fr. White's* Sacred Laws.

Under this Ecſtaſie of new Beams of Light, they are raviſhed with the Opinion of their own Saintſhip, and they indulge themſelves in all the ſweet Appetites of Spiritual Pride, affected Sanctity, and ſingularity of Perſwaſion; for without ſome odd Notion (more ſubtile than others have) or a Revelation,

lation, as if dropped from St. *Paul*'s third Heaven, they have no Hearts-eaſe; and having the Maggot turn'd into a Butterflie, O how it flutters and mutes its Eggs upon every freſh Colewort!

This kind of Brain-ſick Religion, is no ſooner born, but preſently like *Cadmus*'s iſſue, it falls to war under the Banner of Reformation, which is that Fort Spiritual, that *Palladium*, they muſt defend; and thereby promiſe to themſelves Laurels and Palms, which ſhall cover and protect them from all the *bruta Fulmina*, as they repute them, of the National Church; thinking themſelves above the Juriſdiction of any Eccleſiaſtical Court, their Dominion being founded in Grace. *Idem.*

The pretence of maintaining Religion, or the ſham-affrights ſuch People divulge they have of it, being altering, or taken from them, may, with the leaſt danger to the Deſigners of any Revolution, be uſed as a blind to carry on any Intriegue; and the pretence of refining Religion, hath powerful Philtres and Faſcinations, to bewitch the Unwary, and tickle the Hypocrite.

While ſuch like Religious People, as I have been deſcribing, in the late miſerable times (when there was neither Lawful, Civil, or Eccleſiaſtical Authority) obtained Power, theſe Glowworms were as plentiful as Locuſts, filling every place with new, but not uniform Light; nothing was more common in their Mouths, than that the Diſpenſation or Goſpel of the Holy Ghoſt was to be expected, that of God Almighty being paſſed away, at the coming of our Saviour, and His Sacred Eſtabliſhments being to ceaſe at the approach of this.

What wild fancies, What Hereſies revived, were then in Vogue, I had rather were forgot than ſhown upon the Stage: and only ſhall obſerve, that ſince Religion is like the Heart in the Body, full of Vital Spirits, it encreaſeth the care of a Sovereign, That neither the Divine Fire be ſufflaminated or extinguiſhed by Irreligion or Atheiſm; nor by Enthuſiaſm ſo ſublimed, as it cauſe a Calenture.

Concerning Toleration of Religion.

As to the laſt Particular, it is ſo nice a point (now eſpecially) that I had once deſigned not to have touched upon it; but that I may not wholly fruſtrate Expectation in ſaying nothing, I ſhall content my ſelf with ſumming up ſome few Authorities from *Lipſius*, and others upon this Subject.

(*b*) *Lipſius* ſaith, it is his firm Opinion, That one Religion ſhould be preferred in one Kingdom, and bemoans the Condition of *Europe*, wherein Religion hath kindled ſuch diſagreeing Flambeaus, and endeavours to pour Water on that Sacred Fire. (*b*) *Polit. lib. 4. c. 3.*

(*i*) He makes two kinds of thoſe that ſin in Religion; *Firſt*, Thoſe who have ill Sentiments of God, and the received Holy Rites, and do endeavour to force others by Riots and Tumults, to be of the ſame perſwaſion. *Secondly*, Thoſe who have as depraved opinions, but keep them to themſelves, keeping (*i*) *Publice peccare dico, qui & ipſi de deo receptiſque ſacris ſentiunt, & alios ad ſentiendum per turbas impellunt: Privatim, qui pariter male ſentiunt, ſed ſibi.* Ibid.

ing this Fire on their own Hearths, only to dreſs their own Viands with.

Concerning the firſt of theſe, he concludes, they ought to be puniſhed; leſt, as St. *Cyprian* ſaith, The Prince be puniſhed for them; for with St. *Auſtin* (*k*) he affirms, That it is better that one Scabbed Sheep be removed, than the whole Flock be infected. Agreeable to which is that which (*l*) *Seneca* affirms, That in divers places, the puniſhment may be divers, of Religions violated, but every where ſome puniſhment is enjoyned.

(*m*) *Juſtinian* gives the Reaſon, why ſome Puniſhment in ſuch caſes ſhould be inflicted; becauſe the concern of Religion being of a great extent, the Injuries committed againſt Divine Religion in ſome ſort affects all.

There being ſo many Hot-ſpurs and Bigots in Religion, that are always buſily and pragmatically perplexing themſelves and others with ſubtile Enquiries of things under the Earth, and above the Heavens (as (*n*) *Plato* phraſeth it) that is, of things beyond the Ken of judicious Mortals; either poring in St. *Faith*'s under *Paul*'s, or fluttering on the Fanes of ſome Spires or *Cupalo's*, to the Diſturbance of thoſe that would be at their publick Devotion in the Quire. Such *Turbones* (as *Lipſius* calls them) ſhould be ſuppreſſed, if it can be without a greater Diſturbance. So (*o*) that the Application of the Remedy be rightly timed, that by unſeaſonable Remedies the Diſtemper be not fired, as the Judicious (*p*) Hiſtorian ſaith, *Intempeſtivis remediis delicta accendere.*

As to thoſe who have Souls tainted with Errors, yet endeavour to infect none, but keep the Contagion within Doors, and propagate not their Errors: *Lipſius* applies that of (*q*) *Lactantius*, Who can impoſe a neceſſity upon me, either of believing or disbelieving? And that of (*r*) St. *Auſtin*, That ſuch be wrought upon rather by Inſtruction than Injunction, by admoniſhing than menacing. As when Strings are out of Tune, they are leiſurely to be ſcrewed up to Concord, not haſtily, leſt they break; ſince they deſire (*s*) no greater Liberty than to be ſilent. For as *Curtius* ſaith, *lib. 7. Nemo Rex perinde animis imperare poteſt ac linguis*: None can ſo well command the Mind as the Tongue. So in matters of Faith, he commends (*t*) St. *Auſtin*'s Rule, ſo to ſuppreſs Errors, that there may remain ſuch as may repent they have ſinned. Therefore he is not for uſing ſeverity to ſuch, whereby ſome may be made Hypocrites, and few Converts, according to that of *Themiſtius*, *Purpuræ tuæ Cultores aliquos efficies, non Dei.*

It is for ſuch as theſe the Act of Uniformity provides, when it allows five beſides the Family; and thoſe that cannot be content with that Indulgence, may thank themſelves, if they occaſion ſeverer Laws againſt them.

(*k*) *Melius eſt ut pereat unus quam ut pereat unitas.*

(*l*) *Violatarum Religionum aliubi atque aliubi diverſa pœna eſt, ſed ubique aliqua.* De Benef. l. 3. c. 6.

(*m*) *Quod in Religionem divinam committitur, in omnium fertur injuriam.* Lib. 4. Cod. de Hæreticis.

(*n*) Πεειεργάζονζ ζητοῦνλες τὰ τε ὑπὸ γῆν καὶ τὰ ὑπεεάνια. *Apol.*

(*o*) *In morbis nihil eſt magis periculoſum quam immatura medicina.* Sen. Conſol. ad Hill.

(*p*) *Tacitus*, 12. *Annal.*

(*q*) *Quis imponit mihi neceſſitatem vel credendi quod nolim, vel quod velim non credendi?* Lib. 5. c. 4.

(*r*) *Docendo magis quam jubendo, monendo quam minando.* Epiſt. 65.

(*s*) *Tacere liceat; nulla libertas minor a Rege petitur.* Sen. Oedip.

(*t*) Peccata ſic compeſcas, ut ſint quos peccaſſe pœniteat: Ad Africanum Proconſulem.

CHAP.

CHAP. XII.

Of the Clemency of a Prince, and how far Beneficial.

THIS is the ſoft Ermin that lines the Royal Robes of Princes, this is the orient Pearl which ſtuds their Diadems. None ever wore a finer or gentler Furr within his Imperial Veſt; nor ever had more conſpicuous, valuable, or more genuine Jewels of this ſort in his Crowns, than our late moſt Gracious and Merciful Soveraign of Bleſſed Memory. Who, as a Learned Perſon moſt truly obſerved long (*a*) ſince, had goodneſs of Nature, Humanity, and Charity (or by what divine Attribute you will call it) as the maſter Ingredient in his Compoſition: of whom moſt truly was verified, what out of *Herodian*, *Pareus* notes in his Aphoriſms of *Pertinax* ſucceeding *Commodus*, (as that moſt Gracious King did to the Senate of Tyrants, and the wickedeſt Uſurper *Cromwel*) (*b*) That nothing more pleaſant and profitable could happen to Subjects, than the Death of Tyrants, and the Empire of a Clement or Merciful Prince ſucceeding. So that whatever I can write in commendation of this Royal Qualification, and much more, is but a Dawb, and no Varniſh to his Statua, who in all our Annals will be ſtiled the Clement, Merciful, and Reſtorer. But I deſign not here his Apotheoſis, yet could do no leſs than ſtrow ſome Lillies on his Grave upon this occaſion.

(*a*) Character of King *Charles* the Second. *Anno* 1660. His Clemency.

(*b*) *Tyrannorum cæde, & clementis Principis ſuccedentis Imperio, nihil jucundius, nihil utilius ſubditis accidere potuit.*

Therefore to paſs to the ſubject matter. The (*c*) Philoſopher obſerves, That the moderation of *Theopompus* much ſetled the *Spartan* Government; and adds, that what leſſens a Kingdom in Power, augments it in Length and Duration. By which he can mean nothing elſe, but that mild, and not auſtere or violent ſevere Government, is what gives a long continuance to Principalities. However we may be ſure a Prince's Mercifulneſs is one of thoſe Vertues which are echoed through the longeſt and loudeſt Speaking-Trumpet.

The Benefit of Moderate Government.

Μετεμόσυνλ☉.

(*c*) Τῆς γὰρ δυνάμεως αὐξῆσαι, ἤυξησε τῷ χρόνῳ ἡ βασιλεία. *Lib.* 5. *Polit. c.* 11.

(*d*) *Salluſt* ſaith, That thoſe who have tempered their Empire with Benignity and Clemency, have had all things Proſperous unto them, their very Enemies being more juſt to them that uſe it, than ſome Subjects are to others who leſs practiſe it. Therefore the Orator (*e*) ſaith, That Men (much more Princes) in nothing, make nearer approaches to the Deity, than in giving that to Men which he calls *Salus*; Health, Proſperity, and Benefit to a People: to produce all which a Prince's Clemency muſt concurr.

(*d*) *Qui benignitate ac clementia Imperium temperavere, his candida & læta omnia fuiſſe: etiam hoſtes æquiores quam aliis cives.* Ad Cæſarem.

(*e*) *Nec ulla re propius homines ad deum accedunt, quam ſalute hominibus danda.* Cic. pro Ligat.

The Divine (*f*) *Seneca* gives an excellent Rule for Princes to obſerve that they deport themſelves ſo to their People, as they would wiſh the Gods would do to them.

(*f*) *Se tales civibus præbeant, quales ſibi deos eſſe volunt.* 1. de Clem. c. 5.

Such a Prince, the other (*g*) *Seneca* the Poet elegantly deſcribes, which

(*g*) *In Octav.*

which (if any other) our late King deſerves to have writ on his Tomb:

Pulchrum eminere eſt inter illuſtres Viros:
Conſulere Patriæ, parcere afflictis, fera
Cæde abſtinere, tempus atq; Iræ dare,
Orbi quietem, ſæculo pacem ſuo:
Hæc ſumma Virtus, petitur hac Cœlum Via.

(*b*) *Vim temperatam Dii provehunt in majus.* Horat. Od. 3.

Another famous (*b*) Poet tells us, That divine Power enlargeth temperate Government; and a grave (*i*) Hiſtorian tells us, That moderately exerciſed Power conſerves all that it hath acquired; for Mildneſs in all Affairs, and (*k*) Obedience, is better payed to gentler Commands, than to the more rigid and auſtere.

(*i*) *Potentia mediocrita exercita omnia quæſita conſervat.* D. Caſſ. lib. 43.

(*k*) *Remiſſius imperanti melius paretur.* Sen. de Clem.

A Prince, ſaith * *Tacitus*, ſhould endeavour to obtain Love among his Subjects, and fear among his Enemies. For as the || Poet ſaith,

* *Amorem apud populares, metum apud hoſtes quærat.* Annal. 11.

Non ſic excubiæ, non circumſtantia tela,
Quam tutatur Amor.——

|| *Claudianus ad Honor.*

A Prince having the Love of his Subjects, yet muſt have Guards.

That Love is a better defence than Halberts, Battle-Axes, and common Guards. Yet we have known a Prince (who for this Vertue of Clemency, deſerved as much Love as any) deſigned to be aſſaſſinated, when wicked Conſpirators hoped his ſmall Guards would be too weak to defend his Royal Perſon againſt their Force.

Therefore however commendable Clemency be in a Prince, yet it ſhould not be his conſtant wear; ſome Scarlet, with the fine Linnen, makes not only a more ſplendid, but an uſefuller ſhow. Though the (*l*) Poet ſay true,

(*l*) *Senec. Trag.* Overmuch Clemency dangerous.

Hoc Reges habent magnificum,
Et ingens, nullus quod capiet Dies,
Prodeſſe Miſeris, ſupplices fido lare
Protegere.——

Yet the Rule of the Prince of (*m*) Hiſtorians, is to be obſerv'd, That a Sovereign know all the Stratagems of his Enemies, but not to proſecute all; to pardon ſmall faults, and accommodate Severity to great Crimes. For as another Judicious (*n*) Author ſaith, Healthful Severity ſhould ſometimes overcome the unprofitable and ineffectual kind of Clemency; for it often happens, (*o*) That the unruly Patient makes the crueller Phyſician.

(*m*) *Omnia ſcire, non omnia proſequi, parvis peccatis veniam, magnis ſeverltatem commodare.* Tacitus vita Agric.

(*n*) *Salutaris ſeveritas vincere inanem ſpeciem clementiæ.* Cicero ad Clement.

(*o*) *Intemperans æger crudelem facit medicum.* Publius.

So (*p*) *Cotys* the *Thracian* King, anſwered ſome that taxed him with Severity in a neceſſary Caſe, that it was to make his Subjects Healthful; for ſometimes there is no other way to ſave the ſound Parts, but to ſeparate the gangrene by a total Abſciſſion, though a gentler Hand is deſired by ignorant Spectators.

(*p*) *Meus hic furor ſubditos ſanos reddit.* Stobæus de Regno.

(*q*) In ſome Caſes it is true, generous Souls as tender-mouthed Horſes, are governed by a gentler Bitt; and out of (*r*) Pity to ſuch as wander, ignorantly miſſing, rather than willfully paſſing out of the way, it is better with a gentle Hand to lead them into right Paths, than to expel them.

(*q*) *Ingenia noſtra, ut nobiles & generoſi equi, melius facili fræno reguntur.* Sen. 1. de Clem.

(*r*) *Errantem per agros ignorantia viæ, melius eſt ad rectum iter admovere quam expellere.* Idem de Ira.

All this Method our late King followed too long, till the cunning

cunning Deſignings of the *Achitophels*, the Pride and Luſt of pamper'd Men, the contempt of his forgiving Temper, and the wilful Deviations from their Allegiance, of others, had almoſt put it out of his Power to let the Dutiful and Juſt ſee that he had a Care for himſelf and them.

I cannot here omit what King (*s*) *James* the Firſt, his Royal Grandfather, ſaith of ſuch a People; That he was the *Phrygian* that too late, and at too great a price, was wiſe: For whereas by all gentle means he endeavoured to allure them to Obedience, the contrary hapned to him; ſo that all the return was, he loſt his Endeavours upon an ungrateful People, and unlooſned the Government by his Lenity. This Age hath found this Remarque too true; and though I ſhould be loth to excite his Royal Grandſon to any ſort of Severity, yet I ſuppoſe it is a general Belief, That His preſent Majeſty will not ſuffer Himſelf to be impoſed upon by a Party that have ſo groſly abuſed the Lenity of His Royal Grandfather, Father, and Brother.

(*s*) *Baſilicon Doron.*

Who deſerve not Clemency.

Nor can it be judged Severity in a Prince (who hath ſeen ſo great and durable Clemency contemned, and diſpoſing men rather to the moſt cruel and wicked Rebellions) to oblige theſe by the terror of his Laws to be kind to themſelves, as well as the Publick, by creating no Diſturbances, or publickly affronting his Authority, as they did too lately in His Royal Brother's time. If there be any ſuch, who for ſiniſter Ends are at this time of day preſſing him with what was urged to (*t*) *Cleomenes*, That it becomes good Magiſtrates to be mild to all: It is to be preſumed they may receive the like Anſwer, That it muſt not be to that degree, as to bring Himſelf into contempt. Much leſs ought a Prince to uſe it to thoſe who have at any time heretofore joyned in thoſe Tumultuous Petitions in His Royal Brothers Time, or in countenancing the Bill of Seclusion againſt His Royal Perſon.

(*t*) *Plut. in Lacon.*

For although His Majeſty may follow the Example of (*u*) *Alphonſus*, who ſaid, That private Offences to his Perſon he could forgive; yet he ought to be ſevere againſt thoſe Offences which concerned the Commonweal: Or as *Lewis* the Twelfth of *France*, who being adviſed (after he came to the Crown) to take ſome Revenge againſt that Great General *Lewis de Tremoulie*, that had fought againſt him, replied, He would not puniſh the Affronts done to the Duke of *Orleance*. And ſo His preſent Majeſty may forgive the Injuries done to Him as Duke of *York*; yet it is not reaſonable to think, but that he will ſtrenuouſly aſſert and defend the Rights and Prerogatives of the Crown. So that it will be His Majeſty's Intereſt to truſt none of thoſe that would (contrary to the Laws of God and Man) ſo wickedly have precluded him from his Right to the Crown: And it will be adviſeable for all them to repent them of that unjuſt Act, and tranſmit it as a Caution to their Poſterity, never to attempt the like: Which will be more honourable and advantageous for them to do, than the ſtriving to ſet up a ſpurious Title.

(*u*) *Panormitanus in vita Alphonſi.*

(*x*) *Phil. de Comines.*

Kings may forgive Offences againſt them before they were Kings.

CHAP.

CHAP. XIII.

Of Prudence requiſite in a Prince.

The Uſe of Prudence in Government.

IT is Prudence directs all the great Affairs of a Monarch to that Scope and *Terminus*, to which all muſt aim, who deſign an happy Reign over good Subjects. By it they know when to relax, and when to ſtraiten the Reins; where to place their Favours, and whom to employ in every Adminiſtration; and by it they are guarded from all the Vicious and Malevolent: For none dare diſturb the Prudent, who have no unarmed Parts, being all Head, all Eyes, all Hands: Inacceſſible by the Flatterers, inacceſſible by the Vain-glorious, the Ambitious, and Debauched. Such a Prince is ſerved by the Juſt, the Wiſe, the Prudent, and Skilful. *Nullum Numen abeſt, ſi ſit Prudentia.* Such a Prince is never ſhort-ſighted; he foreſees every thing in its Original Cauſe, fits every thing to its End.

Authors commending Prudence.

The (*a*) Philoſopher tells us, That it is the proper and peculiar Vertue of a King: For, more things, ſaith the Sententious (*b*) Hiſtorian, are done in great Empires, by Conduct and Counſels, than by Weapons and Hands: Hence *Flaccus* in his *Argonauticks*

(*a*) Ἡ φρόνησις ἄρχοντος ἴδιον ἀρετὴ μόνη. *Polit. lib.* 3.

(*b*) *Plura in ſumma fortuna auſpiciis & conſiliis quam telis & manibus geri.* 13. Annal.

——*non ſolis viribus æquum*
Credere, ſemper acri potior prudentia dextra.

(*c*) *Proprium eſt prudentiæ conciliare ſibi animos hominum, & ad uſus ſuos adjungere, cum virtutes ſpecie diſpares prudentia junguntur.* 2. de Officiis ad Brutum.

Hence it is that the great (*c*) Orator ſaith, It is the Property of Prudence to attract and allure Mens Minds, and render them uſeful. For, Vertues of different Claſſes by it are united; there being nothing that deſtroyeth Authority, ſo much as the unequal and untimely Interchange of Power, preſſed too far, and relaxed too much; and Hatred, Timorouſneſs, and Temerity, Profuſeneſs, and Parſimony: all which are balanced, timed, and ſeaſonably applied by Prudence.

What the Eye is to the Body, in diſcovering the various Figures, Dimenſions, and Diſtances of Bodies, whereby we may direct our Courſe to or from them; that Light of the Soul (but much more pure) is Prudence, which ſees not before only, and one Hemiſphere ſingly, but every where round; whereby the Soul forms (ſaith a ſubtile (*d*) Philoſopher) a moſt beautiful Model and Exemplar of all its Actions.

(*d*) *Jamblichus Epiſt. ad Aphalum.*

(*e*) *Damippus lib.* 1. *de Prudentia.*

It is this Vertue (ſaith another ſage (*e*) Author) which deſigns and diſpoſeth infinite Things, and ſo is the Parent and Conductor of all other Vertues, by whoſe Preſcript and Reaſon all things are ordered.

The Particulars wherein Prudence uſeful to a Prince conſiſts.

To exerciſe this uſeful Vertue, requires a Man not only of Ingenuity, Wiſdom, Memory, diſquiſitive and ſpeculative; but alſo

alſo converſant in great and various Affairs, in Hiſtories Ancient and Modern, whereby he may be able to collate Matters, and adjuſt them to their proper Scope and Deſigns.

By this all Men (as well as Princes) take mature Counſel, conſider things good and evil, commodious and incommodious, examine all Inſtruments, as to their fitneſs and unfitneſs, compare Circumſtances, reviſe Examples, conſider of timing of Buſineſs, Places and Perſons, natural tendencies, and where Authority is to be uſed, and where Suaſives; how to countermine, how to penetrate into hidden Counſels of others, and to unmask their Diſguiſes; to ruminate upon things by-paſt, to order the preſent, and provide for the future.

The Diſeaſes of a State eaſilieſt remedied by a Prudent Prince.

It is Prudence teacheth how to be skilful in knowing the Cauſes, Symptoms, ſpeedieſt and moſt effectual Cures of the Diſeaſes of a State. For, as Prudence is the very healthful conſtitution of a Soul, exerting no ſickly or diſtempered Actions; ſo a prudent Prince endeavoureth with all his Skill and Might to keep the State in a moſt perfect temper of Health, vigour, beauty, and firmneſs: So that under an old experienced Prince, there are no Symptoms of old and decrepit Age in his Kingdom.

Archytas the *Pythagorean* ſaith, As a General leads his Army, the Admiral orders his Fleet, the Pilot his Ship, or God governs the World, and the Soul the Body; ſo preſentneſs of Prudence orders the Happineſs of Life.

(f) *Sic ipſam fælicitatem, præſens vitæ temperat regitque prudentia.* Stobæus.

It were endleſs to remember all the Benefits that accrue to a Prince and his People by this only Vertue, Prudence. Be the Body of the Commonwealth in a Calenture by Factions and Seditions, a prudent Prince knows how to extinguiſh the Fire, by ſubſtracting the Feeders, or breaking the Force of it, by ſubdividing the complication of Cauſes, or diverting of it ſome other way. Doth it bleed by a Civil War? He can bind up the Wound. Does it ſuffer by want of Nouriſhment? He can ſupply it with ſuitable Food, that will neither pamper it to an unwieldy Sloth, or luxurious Licentiouſneſs: He can by Bleeding or Drenching clear it of all its ſuperfluous Humours: He can aſſwage its Pains by removing Grievances or Oppreſſions: He can invigorate every languid part, by cordial Privileges and wholeſom Laws; can ſet ſtrait its diſlocated or diſtorted Joynts, when any of the great Officers or Magiſtrates faulter, limp, or halt in their Duties. *Medæa* never knew ſo many Balſamick Herbs to renew the old Age of *Jaſon*, as a prudent Prince doth Rules and Methods to cure all the Diſtempers of his Kingdom, preſerve it in a perfect Health, or reſtore it when declining.

(g) *Quam multis virtutibus opus eſt, quibus velut anchoris hæc navis firmatur? quam varia prudentia, qua velut clavo gubernetur?* Ep. ad Imp. Reg. &c.

The Conſideration of all which, made (g) *Lipſius* ſay, How many Vertues are neceſſary as Anchors to faſten the Ship of the Commonwealth? how various Prudence, as a Rudder to govern it?

CHAP.

CHAP. XIV.

Of a Prince's Courage and Conduct in Military Affairs.

The Benefits to the Subjects under a Martial Prince.

IT is not onely neceſſary that a Prince ſhould know and exerciſe all thoſe Royal Vertues that make him adorable on the Throne, and in his Cabinet-Council, when he is clothed with the Robes of Majeſty: But he muſt likewiſe, for the preſervation of his People from Foreign Invaſions, enlarging of his Empire, and keeping his Subjects in a profound Peace at home, free from inteſtine Seditions and Rebellions, put on his Armour, and act the Part of a *Generaliſſimo*.

This requires, according to the (*a*) Philoſopher, many Vertues to eſtabliſh it. Therefore in another place (*b*) he ſaith, In ſome Countries the Laws were framed towards the attaining of particular Ends to the Governours and People: and in ſome the End of the Laws were, that they might rule over their Neighbours; as he inſtanceth in the *Lacedæmonian* and *Cretan* Government, where the greateſt part of their Laws were accommodated to Warfare; and concludes, That in all Nations which can hope to be Superiour to others, ſuch Laws are in honour; as he inſtanceth in the *Scythians*, *Perſians*, *Thracians*, and *Celtæ*. So in *Carthage*, to encourage Military Service, ſo many Rings were given to the Soldiery, as they had ſerved in ſeveral Expeditions. In *Macedonia* it had been a Law, that he that had killed no Enemy, was girt with an Halter: And among the *Scythians*, That ſuch an one ſhould not drink of a Cup which at a certain Solemn Feaſt was to paſs round. Among the *Spaniards* there were as many Obelisks, or pointed Pillars, ſet about their Graves, as they had killed Enemies. All which, and infinite more Places in (*c*) him, and other Authors produceable, ſufficiently clear the neceſſity of a Prince's both having and encouraging Military Force: and all are as ſo many Arguments, That it is very neceſſary, and conducible to the Prince's Glory and Safety, as well as his Peoples, that he be not only valiant and couragious in his own Perſon, but that he underſtand the Office of a great General. There are none more famous in the World, than ſuch Princes as have themſelves led and headed their own Armies; as is moſt eminently proved in *Alexander the Great* and *Julius Cæſar*. So in our King *Richard* the Firſt, and *Edward* the Firſt.

Hence it is that (*d*) *Cæſar* was wont to ſay, There are two things which obtain, keep, and encreaſe the Princedom, *viz.* Soldiers and Money. For, as the great (*e*) Hiſtorian obſerves, By Sloth no great Empires are held together, but it muſt be done by Force of Men and Arms: It being (*f*) the part of a Private Family to retain its own; but to carry Arms abroad, is a Kingly Praiſe.

Such

(*a*) Στρατιωτικὸς βίος πολλὰ ἔχει μέρη τῆς ἀρετῆς. *Pol. lib.* 2. *c.* 7.

(*b*) Τῆς πολιτείας ἕνεκα ὁρῶσι τοὺς νόμους, ὅπως δεσπόζωσι τῶν πέλας. Πρὸς τὸν πολέμους συντέτακται μάλιστα ἡ τε παιδεία, καὶ τὸ τῶν νόμων πλῆθος ἐπὶ τὸ ἐν τοῖς ἔθνεσι πᾶσι τοῖς δυναμένοις πλεονεκτεῖν, ἢ τοιαύτη τετίμηται δύναμις. *Id. l.* 7. *Pol. c.* 2. Laws for encouraging Soldiers.

(*c*) The neceſſity of having a Standing Force, is for preventing Rebellion, and defending againſt Foreigners; as appears in *Ariſtotle*. Τεῖχον δὲ ὅπλα τοὺς μὲν κοινωνοῦντας ἀναγκαῖον καὶ ἐν αὐτοῖς ἔχειν ὅπλα· πρός τε τὰς Ἀρχὰς καὶ πρὸς τοὺς ἔξωθεν ἀδικεῖν ὑπάρχειν ποιοῦντας. *Lib.* 7. *c.* 8.

(*d*) Δύο τε εἰσὶ τὰ τὰς δυναστείας παρασκευάζοντα καὶ φυλάττοντα καὶ ἐπαύξοντα, στρατὸς καὶ χρήματα. *Dio. l.* 13.

(*e*) *Non ignavia magna imperia contineri, ſed virorum armorumque faciendum certamen.*

(*f*) *Sua retinere, privatæ domus; de alienis certare, regiam laudem eſſe.* 15. *Annal.*

How a Military Prince prevents Rebellions of his Subjects.

Such a Prince who hath (when a Subject) hazzarded his Life for his King and Country, ſhown his great skill in ordering and providing for his Army, in diſciplining it, hath been fortunate and ſucceſsful, hath a Genius to military Employment, a brisk and vigorous Soul, not only (when he comes to be Sovereign himſelf) puts a freſh Spirit into his People by raiſing their Hopes and Confidence that he will encreaſe the Glory of his Nation; but it makes him ſecure at home from Seditions and Rebellions. For he is very fool-hardy, or deſperately Revengeful, that will challenge a ſingle Man who is experimented to have Valour and Skill at his Weapon: much more is he who knowing his Prince ſuch an one, and who hath the Power of his Kingdom to aſſiſt and defend him, will offer to moleſt his peaceable Reign, unleſs he find ſome advantagious opportunity ſtrangely favourable to his Deſign, or take ſome Seaſon before ſuch a Prince be well ſetled in his Throne (as deſpairing ever after to effect any thing) and be in that deſperate Condition, that if he then cannot puſh forward his Deſigns, he muſt for ever live inglorious and miſerable. Such was the Caſe of the raſh, ingrateful, and aſpiring Duke of *Monmouth*, who to the eternal diſcredit of the name of Proteſtant, ſo unpolitickly as well as maliciouſly raiſed the late Rebellion againſt his Lawful Soveraign, pretending a Legitimacy, which his Father (that the beſt of all Men living knew the falſhood of) diſowned, and more than once made publick Declaration of it. How he proſpered in this attempt, the World knows; and if He and his Adviſers had not been beſotted, they might have eaſily foreſeen.

How a couragious Prince ſecures his Subjects from Foreign Enemies.

Beſides this great and happy advantage to a valorous and Military Prince, in the ſecuring his own Country in Peace within themſelves, the Benefit is likewiſe great in the preventing of any affronts, injuries, or Indignities to him or his People, from any of his Neighbours; for none dare (*g*) provoke or do Injury to a King, his Kingdom, or People, ſaith *Lampridius*, that knows the Prince prepared, forward, and ready to vindicate his People.

(*g*) *Nemo provocare audet aut facere injuriam ei Regno aut populo, quem intelligit expeditum atque promptum ad vindicandum.* Vita Alex.

This military Genius in a Prince being ſupperadded to his other Royal Vertues and Qualifications, furbiſheth all their Arms, ſets a freſh Gloſs and Luſtre upon them; and ſuch a Prince being generally ſucceſsful in his Attempts, (for that commonly gives the firſt notice of his Courage and Conduct) will have every one readily flock to his Standard, to (*h*) expoſe themſelves betwixt him and the points of Traitors Swords, will have them throw themſelves and their Fortunes whereever the ſafety of their King requires it. So *Cicero* notes, that *Fabius Maximus*, *Marcellus*, *Scipio*, *Marius* and other great Generals, had the Emperors Office and Armies committed to them not only for their Vertues, but alſo by reaſon of their fortunateneſs, to whom (*i*) the Winds and Tempeſts have been favourable. It greatly (*k*) conducing to the management of

(*h*) *Objicient ſe mucronibus inſidiantium, & ſe ſuaque jactabunt, quocunque deſideraverit Imperantis ſalus.* Sen. 1. de Clem.

(*i*) Cic. pro Manilio. *Quibus etiam venti tempeſtateſque obſecundant.*

(*k*) *Vehementer enim pertinet ad bella adminiſtranda, quid hoſtes, quid ſocii, de Imperatoribus exiſtiment.* Idem.

War, what opinion the Enemies and Allies have of ſuch Generals, as the ſame Orator notes: and the like may be ſaid of Warlike Kings.

Of King *Richard* the Firſt.

What immortal Glory is it to *England*, that it hath had King *Richard* the Firſt, who carried his victorious Enſigns to the Holy Land! What a Memorial of his Name, and of the Proweſs of his People hath King *Edward* the Firſt left to all Poſterity, by the advancing his conquering Armes into the very High-Lands of *Scotland*! What renown did King *Edward* the Third, and the Black Prince his Son win in *France*, when they not only won ſo great Victories, but brought the King Priſoner, and (what no Nation elſe can boaſt of) had at the ſame time the King of *Scotland* alſo Priſoner! It may be eaſily conceived that theſe two valiant Princes, and the Sons of that great King, ſpirited the whole *Engliſh* Nation; and in that Age the Renown of it equalled, what now the *French* aſcribe to their great King.

Of King *Edward* the Third, and the Black Prince.

Of *Henry* the Fifth.

The Annals ſwell with the Atchievements of *Henry* the Fifth, who in ſo few Years, upon the matter, ſubdued all *France*. So that his Infant Son was Crowned King at *Paris*.

It is not to be expected that many Ages can produce ſuch Examples; but every Reader of Hiſtory may obſerve, That in every Age ſome one or two Crowned Heads carry the Trophies from all the reſt, fill their Countries with Triumphal Arches, and raiſe pyramids of Glory to their own, and their Countries high Renown.

Why our three laſt Kings could not appear ſo Formidable abroad.

A ſtrange Factiouſneſs in the Reigns of our three laſt Kings, and the dreadful Rebellion, have deprived them of the opportunity of ſhowing the *Engliſh* Proweſs on the publick Theater, as it had been before. Yet when they were employed, they ſhowed they ſtill retained the old *Engliſh* Valour; and now that God hath ſent us a King who hath aided both the *French* and *Spaniſh* Armies, more ſignally Triumphed at Sea over the *Dutch*, than any Admiral did before or ſince: Who hath a Soul and Genius inclined to Warlike and Heroic Actions, and hath with himſelf reſolved, and publickly to his two Houſes declared, by the Aſſiſtance and Bleſſing of God, He will adventure his Perſon as far as any Man in his Dominions for the Good of his People, and their ſafety; and endeavour to raiſe the renown and repute of *England* as high as any of his Royal Predeceſſors. I cannot ſee (if God prolong his Reign) why we ſhould not hope to reap all the advantages either *England* or any other Nation have enjoyed under their moſt Victorious Princes: and though by ſo early a Rebellion he hath been neceſſitated to enter the Field ſo ſoon, to ſuppreſs his ungrateful Subjects; it was but the giving him occaſion to whet that Sword, and ſcour his Armour, which had long been unexpoſed to the Sun; and by this Specimen of his Courage, Conduct, and good Fortune, and his Subjects Valour, ſhow to the World, that he is able to ſecure his People from any Foreign Hoſtile Attacques: And if any of his

What we may expect under King *James* the Second.

his Neighbours be found to have furniſhed theſe Rebels with Arms and Money; no doubt his Loyal Subjects will be very preſſing to be imployed to repay their kindneſs: and they will find, that (*l*) according to the Kings Warlike Spirit, ſo will his Armies be; it being true of himſelf, what (*m*) *Cicero* ſaith of another, That there hath been no kind of War in which Fortune hath not exerciſed him; ſo that his Armies may be ſecure both in his Diſcipline and Example. The Qualifications of an Emperor (as (*n*) *Cicero* deſcribes them) all concurring in his Royal Perſon, (*viz.*) Labour in Buſineſs, Fortitude in Danger, Induſtry in Action, and Swiftneſs in Execution, joyned with great Temperance, Faith and Humanity; to which I may adjoyn that of *Claudian*,

Character of a Martial Prince.

(*l*) *Tanti eſſe exercitum, quanti Imperatorem.* Florus, l. 2. c. 18.

(*m*) *Nullum genus belli ſit in quo illum non exercuerit fortuna.* Cicero pro lege Manil.

(*n*) *Labor in negotio, induſtria in agendo, celeritas in conficiendo, &c.* Ibid.

——————Ductorque placebit,
Qui non præcipiti rapiet ſimul omnia caſu;
Sed qui maturo vel læta, vel aſpera rerum
Conſilio momenta regens, nec triſtibus impar,
Nec pro ſucceſſu tumidus: ſpaciumque morandi,
Vincendique modum, mutatis noſcet habenis.

CHAP. XV.

Of the Burthen and Care of Kings in Governing.

THere are as many other Vertues requiſite in a good King, as there are in a good Man; but I have only treated of thoſe that are the Orienteſt of the Crown Jewels.

I ſhall now conſider two great advantages, that accrue to People by Kingly Government: The firſt is the Burthen and Care that Kings undergo in the Government of their People; and the ſecond, the benefit to the People in the Hereditarineſs of Monarchy: and then paſs to the King's Sovereignty, and the principal Branches of it.

(*a*) *Ammianus* tells us, That Empire is nothing elſe but the Care of the ſafety of others, which, according to the extent of their Dominions, the well or ill Temperedneſs of their Subjects, are greater or leſs, as will be obvious to all that will conſider the continual Conſultations and Directions, neceſſary to be ſedulouſly undergone and iſſued forth, the Diſpatches, Intelligences and regular ordering ſuch an immenſe Body: Which made the great (*b*) Moraliſt and Courtier experimentally to aſſert, That the Sovereigns Watchfulneſs makes our Sleep ſecure, his Labour procures our Holy-days, his Induſtry our Delight, his continual Employment our Vacation; and that he may enjoy ſometimes a Relaxation, but never a Freedom from Cares. Which indeed can be no otherwiſe, when we conſider

(*a*) *Nihil aliud eſt Imperium, niſi cura ſalutis alienæ.* Lib. 29.

The Benefit of Subjects by their Prince's Care.

(*b*) *Omnium otium illius labor, omnium delicias illius induſtria, omnium vacationem illius occupatio. Ut remiſſam aliquando animam habebit, nunquam ſolutam.* Senec. Conſol. ad Polyb.

what he elſe-where (*c*) ſaith, That the Care of this one Sovereign watcheth for the Health of the whole, and every particular. So that the immenſe (*d*) Multitude (whether we take it for Men or Buſineſs) is encompaſſed with the Soul of one, by his Spirit is governed, and by his Reaſon is bowed or inclined.

(*c*) *Unius curam excubare pro ſalute ſingulorum atque univerſorum.*

(*d*) *Hæc immenſa multitudo, unius Anima circundata, illius ſpiritu regitur, illius ratione flectitur.* Id. de Clem. c. 3.

I find it reported of *Pericles*, That ſo often as he was made Commander in Chief, he uſed at the putting on the Military Cloak, to excite himſelf to the conſideration of the Weight of his Employment, by obſerving that he was to command over Freemen, (*e*) *Græcians* and *Athenians*; upon which Reflection he was induced to approve himſelf more Diligent, Careful and Induſtrious, having the Burthen of all their concerns upon him.

(*e*) *Plut. in Apop.*

The Weight of Government.

So a great and learned (*f*) Author tells us, He ought not to ſleep who ſits at the Helm, to pilot the Ship, ſince no Sea hath ſo great Tempeſts, as every Kingdom hath. Therefore a Prince is aſſiduouſly and conſtantly to watch, leſt he err; becauſe he cannot do ſo, but it is with Miſchief to many.

(*f*) *Non licet dormitabundum eſſe qui clavo aſſidet; ſemper itaque aſſidue Principi vigilandum eſt, ne quid erret, quia non niſi plurimorum pernicie delinquit.* Lipſius Epiſt.

So the (*g*) *Tragedian*, not unelegantly according to his wont, deſcribes the Cares of Kings thus,——One Care adds Fatigues to another, and new Tempeſts unquiet their minds; ſo that the ſucceſſive rolling Waves of the Sea, rage not ſo on the *Libyan* Shelves or Quickſands, nor doth ſleep, the Subduer of Cares, unload their Breaſts.

(*g*) *Alia ex aliis cura fatigat, Vexatque animos nova tempeſtas: Non ſic Libycis Syrtibus furit alternos volvere fluctus, Non curarum ſomnos domitor pectora ſolvit.*

(*h*) *Alexander Severus* having Information, That *Ovinius Camillus* (a Senator of an Antient Family, but withal delicately effeminate) intended a Rebellion, affecting the Government; ſent for him to the Palace, and gave him thanks, that he, when other good Men refuſed, did ſpontaneouſly offer himſelf to take care of the Republick; carried him to the Senate, and called him his Companion in the Empire; took him home, and made him wear the Imperial Robes; took him to walk with him a five Miles march, allowing him, when tired, an Horſe; and when he was wearied of riding (being one not uſed to bodily Labour) he ordered him a Chariot, and by other ways, letting him underſtand, that the weight of Government was not to be ſuſtained by ſuch Shoulders as his, ſo wearied and diſcouraged him, that he deſired to be freed from the toyſomeneſs of it: and when he underſtood the Emperors drift, and expected his ſeverity, he only recommended him to thoſe Soldiers that were forward to elect him, and ſent him to his Village.

(*h*) *Ælian. Variar. Hiſtor. lib.* 2. *Lampridius in vita.*

Who not fit for Government.

If therefore ſuch little Tryals diſcouraged *Camillus*, what muſt we think it will do any Prince that hath untractable Subjects, who force him to make Eſſays of various Methods to reclaim them, and of a conſtant ſtanding upon his Guard to ſecure himſelf and the Government? Such are they who make many Princes Reigns Calamitous, that might have been calm and peaceable.

Kingdoms,

Many Particulars wherein the Burthen of Government is discovered.

Kingdoms, saith my Lord St. *Albans*, represent our Bodies, have their times of Health and Sickness, Seasons of Prosperity and Adversity, flourish with Wealth, and languish in Poverty and Want, suffer Distempers, Alterations and Changes. If therefore the Care and Concern of the Physician be great, that hath the Health of many Patients under his Cure: How much more must this great *Æsculapius*'s be, who hath the superintending of infinite Numbers of Subjects of all Degrees, to preserve them in their perfect State of Felicity and Happiness, to watch over the growth of depraved Humors, and hinder their Ferments from boyling into the Fevers and Calentures of Rebellion, to remove all the Obstructions that may hinder the equal distribution of Nourishment in Trade, Commerce, and the free Energy and Force of the Laws; so to order the infinite Varieties of Tempers and Dispositions, that the very *lucta* and jarring of them, may produce an Harmony in the whole. Besides these, there is a Necessity to cherish the Vertuous and the Brave, to discountenance the Vitious and Debauched, and keep them from infecting others; and finally so to manage all things, as not only the present Age, but remote Posterity, may find the happy Effects of his Reign. This is to undergo the *nobilem Servitutem*, as *Antigonus* told his Son, Kingship was.

Governours to be endowed with various Qualifications.

Therefore *Philo* observes, That as the Pilot must change his Sails and Rudder; and as the Physician useth not one kind of Remedy for all Diseases, but observing the Encrease or Remisness of Symptoms, the plenty or want of Humors, and according to the changes of Causes, tries various Experiments: So a Supreme Governour ought to be multiform, or endowed with variety of Qualifications; to act one way in times of Peace, and another in War: being opposed by few, to act resolutely and couragiously; if by many, to add to these Authoritative Suasives; in publick Dangers to act himself, and to commit those Ministeries to others which require Labour more than Conduct: In his Councils to be a Judge, in his Exchequer an Accountant, in his Armies a General, in his Navies Admiral; in his whole Dominions the prime Gentleman, Patriot, and Peer, in Vertue as well as Place.

A Prince's Care in preserving his People at home and abroad.

Besides all these foregoing Considerations, though a Prince by his own Justice, Prudence and other Regal Vertues, and the well dispositedness of his People may keep his own Dominions in Peace: and though there were no Whirlwinds, Earthquakes or Trepidations of Faction and Sedition in his own Kingdom; yet a King's Care is no less in making diligent Observations upon the Designs and Actions of all his Neighbour-Princes and States; to shelter his own Subjects from Tempests and Hurricanes from abroad, to divert Storms, to mingle Interests, or divide, as shall be most for the advantage of his Subjects; to assist his Allies, to countermine the Clandestine Designs of his Enemies abroad.

These

The Imployment of many under a Prince.

These require an *Atlas* to support this immense Structure of Government: These require many Hands of the roughest, delicatest and strongest; many Feet of the swiftest and steadiest; many strong Shoulders and brawny Arms; many severe commanding or charming Eyes; many wise, subtle and toyling Brains; infinite Varieties of Tempers and Dispositions, which must be directed, ordered and imployed by that presiding Soul, that every where, in every part, and in all seasons, must give Life and Energy to all its Members, Faculties and Imployments.

A Prince much concerned for his Fame. (i) *Suum cuique decus posteritas rependit.* Tacit. 4. Annal.

Furthermore, the Actions of Princes after their deaths, will be judged (*i*) without Flattery and Varnish. As after Death and Corruption of parts, the Vertues of Kings perfume their Graves, ennoble, and by Examples, refine Posterity, and leave a taste of immortality behind, out-living their Marble. So if they rule ill, they cannot think by their (*k*) present Power, to extinguish the memory of the next Age, saith the judicious Historian. Therefore *Lipsius* saith, || After their Deaths, there is no place then, or time, wherein the Ghosts of detested Princes will be free from Execration.

(k) *Præsenti potentia extingui posse sequentis ævi memoriam.* Id. || *Post fata nullus est locus, nullum tempus quo funestorum Principum manes a posteris execrationibus conquiescent.*

Since therefore Kings are like heavenly bodies, cause good or evil times, have much Veneration, but no rest; since their Examples are constantly imitated; so that, as (*) *Lipsius* saith, If a Prince lead to Vertue, we follow; if to Vice, we easily bend to it; if he live happily, we flourish; if unfortunately, we fall into the præcipice with him: Or that of *Pliny* be true, That Subjects are mostly plyant, and easily handed into whatsoever way the Prince leads; it necessarily follows, That this Consideration must bring a great Addition to their Cares. For such elevated Souls must needs undergo great Anxiety, how to comport themselves so, as being conspicuous in Vertue and Conduct, they may be secure of good Report. For as (*l*) *Seneca* saith, Fame wafts abroad all the Deeds and Works of Princes, that they cannot more lay hid than the Sun. Hence possibly we may conclude the Reason of that Inscription on *Constantine*'s and others Coyn, *Soli invicto Comiti*: For as the Sun, not only by his Light and enlivening Heat, brings that unspeakable benefit to the whole Earth and living Creatures, as a King is to do to his Subjects; so by its Diurnal Motion, we discover it never to be at rest.

* *Ad virtutem ille præit? sequimur: ad vitia? inclinamus: bene beateque agit? floremus: improspere? labimur aut ruimus cum illo.* Epist. ad Polit.

Flexibiles in quamcunque partem ducimur a Principe & sequaces. Panegyr.

(l) *Omnia facta dictaque Principis rumor excipit, nec magis ei quam Soli latere contigit.* 1. de Clem.

Therefore it must be a great Care in a Prince (that is placed in his Kingdom, as the Sun in our Vortex, whereby his Actions can never be long hid) that he act nothing that (*m*) may detract from his Fame, and the Dignity of his Place. All the Actions of Sovereigns, being not only Examples but Precepts; there being no such Incentments to Vertue or Vice, as their Practices.

(m) *Cordati & magni Principis est nihil committere quod ipsius dignitati aut famæ detrahit.*

A Prince to be Exemplary in Vertue.

Besides, what I have hitherto delivered on this Head, there lies still an heavier Burthen upon a Prince, That for his Subjects sake, he be not only vertuous himself, but by all his Industry,

ſtry, endeavour to take care that they be ſo likewiſe. I know this is much facilitated by his own Example: For as (*n*) *Pliny* ſaith, The Life of the Prince is a ſtanding Law of manners, to it we direct our courſe, are all *Heliotropes* turning to it. For Subjects need not ſo much command as Example: yet we find, that when ſome in the Senate moved (*o*) *Tiberius*, that he would reſtrain the *Roman* Luxury; he writes to them, That he knows not whether he ſhould perſwade them to paſs by the ſtrong and overgrown Vices, rather than to diſcover how unable they were to ſuppreſs them; and ſo tells them that he would not have the matter of envy to fall upon him, but refers it to the proper Officers: There being (*p*) ſomething greater and more ſublime, required of a Prince, (*viz.*) the guarding of *Italy*, the Sea and Provinces.

(*n*) *Vita Principis eſt perpetua cenſura, ad hanc dirigimur, ad hanc convertimus, nec tam imperio nobis opus eſt quam exemplo.* Panegyr.

(*o*) *Neſcio an ſuaſurus fuerim omittere potius prævalida & adulta vitia, quam hoc adſequi ut palam fieret quibus flagitiis impares eſſemus.* Lib. 3. Annal.

(*p*) *Majus aliquod & excelſius a Principe poſtulatum.* Ibid.

A Prince to take care that his Subjects be Vertuous.

By this we may ſee how arduous a task it is to root out vicious Cuſtoms and Habits, which by a ſhort Intermiſſion of executing the Laws ſeverely, will ſoon be ſo overgrown, that it will be much Labour to dig up their Roots, and requires a long and frequent weeding, 'till all the Young Plants, the Evil Plentiful Seed hath produced, be cleanſed out of the Ground.

This *Tiberius*, that declined this task, was at that time in ſuch eſteem, that ſome Provinces (as particularly the further *Spain*) would have built Temples to him; and he denying that, yet could tell the Senate, That it was (*q*) enough to him that he poſſeſſed the Supreme place, and deſired them to witneſs, and Poſterity to remember, That they believed he was worthy of his Anceſtors, was provident of their Affairs, conſtant in Danger, not fearful to give Offence to any, for the profit of the Commonwealth. Theſe things, to him, ſhould be Temples and the beautifuleſt Statues. In this we find a ſhort Deſcription of the Burthen of a Prince, and a ſhorter but comprehenſive one in (*r*) *Salluſt*, That the greateſt Empires have the greateſt Cares.

(*q*) *Majoribus meis dignum, rerumque veſtrarum providum, conſtantem in periculis, offenſionum pro utilitate publica non pavidum credant.* Tacit. Annal. lib. 4.

(*r*) *Maximo Imperio maximam eſſe curam.* Ad Cæſarem.

(*s*) *Tacitus* tells us of *Veſpaſian*. That he was Author of a ſtricter manner of living than formerly, uſing the Ancient Frugal Dyet, and plainer Cloths; which had that effect, that the ſtudy to imitate the Prince, was more efficacious, than the Fear and Puniſhment of the Laws.

(*s*) *Sed præcipuus adſtricti moris Auctor fuit antiquo ipſe cultu victuque; obſequium inde in Principem & æmulandi amor validior quam pœna ex legibus & metus.* 3. Annal.

If then, to be conſpicuous in all ſorts of Vertue, and the Actions (*t*) that flow from them, and the whole, higher and lower claſs of them, in the moſt Comprehenſive Qualifications, be no ſmall Labour, and require no ſmall ſedulous Care to effect in ones ſelf; how much more muſt it be, to make ſo many Millions more Vertuous by Example, Precept, ſtrict Vigilance and Puniſhments? Every one that attentively reflects on this, muſt needs own it an *Herculean* Labour, and ſuch as exceeds almoſt the Apprehenſion of the Subjects.

(*t*) Ἡ περὶ ξεων ἀρὴ ἀπὸ τ ἀρετῆς. 5. *Polit. c.* 10.

Since then, we are happy in ſuch a King as hath laid this as a Corner Stone upon which his Throne is built, by his own Example, to diſcountenance all Vice; and ſince ſo great and weighty

King *James* the Second's diſcouraging Vice.

weighty a Burthen of the well-ordering and governing ſo great a People lies with great preſſure upon him, (for our eaſe and tranquillity) let us not be ſo impolitick, unworthy, or ingrateful by Seditions, Factions, or Rebellions to cauſe him to undergo more diſquiets. For the reſult will be, Our own Miſeries and Calamities will ſit cloſe behind us, when we ſet our Faces againſt ſuch a Prince, worthy of the moſt Imperial of Diadems.

CHAP. XVI.

Of the King's Authority and Soveraignty.

The Sublimeneſs of the Subject.

AN awful Reverence, Qualm, and Trembling, muſt neceſſarily ſurpriſe every one that conſiderately raiſeth his Thoughts to contemplate ſo ſublime a Subject as the Soveraignty of Princes; leaſt what he delivers ſhould appear too diſ-ſpirited, and below the dignity of the Theam; or he ſhould be guilty of ſuch Indiſcretion, as to think he could enrich the Crown and Scepter with Lacker of his own Compoſure.

(a) *Magnum propiuſq; noſcendum id eruditiſſimo viro viſum.* Lib. 6. Epiſt. 16. *Fam navibus cinis inciderat, quo propius accederet, calidior & denſior. Jam pumices nigrique & ambuſti, fracti igne lapides.* Ib.

(a) *Pliny* the younger tells us, that the great Naturaliſt, his Uncle, was ſo deſirous to diſcover the true cauſes of the burning of *Veſuvius*, what materials they were that afforded Fuel to ſo laſting a Fire, and by what impriſoned Spirits, ſo violent eruptions of Flame and Cinders, were at times belched out of the Caverns of that Mountain (though leſs ſtupendious than *Ætna*, *Hecla*, or other *Vulcano's*) that his curioſity led him to climb ſo near the Eruptions of thoſe Flames, that Poſterity loſt the Benefit of his Obſervations, by his untimely Death in the approaches he made.

We daily ſee the *Pyralis* not only ſinge her Wings, but often loſe her Life by her raſh approaches to the Flame. It behoves me therefore, with all the Circumſpection I can, to endeavour to keep my ſelf from ſuch a Fate, as Temerity, too prying or daring an Attempt, may bring upon me on the one hand; or that I fall not into as unpitied a Deſtiny of being contemned and deſpiſed for too groſs and palpable Flattery, in equalling the Throne of Kings with that of the Deity.

The Flattery of ſome, eſpecially of *Valerius Maximus*.

(b) *Penes quem hominum deorumque conſenſus, maris ac terræ Regimen eſſe voluit: cujus cœleſti providentia virtutes de quibus dicturus ſum benigniſſime foventur, vitia ſeveriſſime vindicantur.* Prologo.

A bold ſtroke of this kind of *Sycophantry* we find in (b) *Valerius Maximus* his Epiſtle Dedicatory to *Tiberius*; wherein he tells him that he invokes him as Patron of his Work, to whom, by the conſent of Men and Gods, the Government of Sea and Land was given; by whoſe Heavenly Providence, the Vertues he was to treat of were moſt benignly cheriſhed, and the Vices ſeverely Chaſtized: and in the ſame ſtile (though otherwiſe reputed a grave Author) he goes on, aſcribing a Divinity to his Perſon; telling him, that if from *Jove* the antient Orators begun

begun their Speeches, and the Poets invoked ſome Deity, He more (c) juſtly courted his Favour; other Divinities being founded upon Mens Opinions, but that of *Tiberius*'s, by the Teſtimony of the preſent Age, was equal to the Deities of *Julius* or *Auguſtus*. Yet this *Tiberius* was not only a wicked Prince, but one that rejected ſuch Deifyings, as we find in *Tacitus*, that the farther *Spain* having ſent Embaſſadors to the Senate, that according to the Example of *Aſia*, they might erect a Temple to *Tiberius* and his Mother; upon which occaſion, (ſaith my (d) Author) being reſolved to ſlight the Honour, and to ſtifle the Rumour, that he inclined to Ambition, he tells the Senate, That he had not appeared averſe to the deſires of thoſe of *Aſia*, becauſe *Auguſtus* had not prohibited a Temple to be built to him and *Rome*, at *Pergamus*; and he was reſolved to obſerve all his deeds and reſolutions as a Law, and had yielded to the Erecting that Temple, the rather, becauſe to the Worſhip of himſelf, the Veneration (e) of the Senate was joined. But as it was pardonable once to have received that honour, ſo to be made ſacred with the Image of the Deity through all the (f) Provinces, was to be Ambitious and Proud, and the Honour of *Auguſtus* would be leſſened, if it were made common by promiſcuous Adulations. Therefore he tells the Senate that he knew himſelf to be a mortal Man, and to exerciſe the offices of Men, and it was enough to him, if he filled the prime place, was worthy of his Anceſtors, *&c.* (as I have touched before.) (g) Theſe in their Minds, ſhould to him be Temples, and the moſt beautiful Images, which ſhould be durable; for thoſe which are built of Stone, if the judgment of Poſterity be turned to Hatred, are deſpiſed as their Sepulchers.

Yet however this ſubtile Emperor managed this affair, it muſt be acknowledged, that ſome Princes have been ſo Vain-glorious, as to deem themſelves above the condition of Mortals; as we have Inſtances in *Amulius* (h) King of the *Latines*, and after him in (i) *Heliogabalus*, who endeavoured to appear ſuch by imitating Lightning. So it is recorded of (k) *Alexander*, that he deſired to be reputed the Son of *Jupiter Ammon*; and when he was wounded at the aſſault of *Mazaga*, he ſaid, though he was ſaid to be *Jupiter*'s Son, yet he felt the ſmart, though his Flatterers told him it was not Blood was ſpilt, but a more generous Ichor of the Gods that run in his Veins. So (l) *Pſaphon* the *Libyan*, taught the Birds to ſtile him a great God. So (m) *Lyſander* had Altars built to him, and Sacrifices appointed in Honour of him, and had his Braſs Statue erected at *Delphos*. *Julius* (n) *Cæſar* likewiſe ſuffered ſuch Honours to be decreed to him, as were the Badges and peculiar Enſigns of a Divinity, as Temples and Altars, a Prieſt and Couch. Of *Auguſtus* and *Tiberius* I have touched before. *Caligula* proceeded ſomething higher, for he took off the Heads of the Statues of *Jupiter Olympius*, and other of their reputed Deities, and placed the figure of his own Head upon them,

(c) *Mea parvitas eo juſtius ad favorem tuum decurrit, quod cætera divinitas opinione colligitur tua, præſenti fide, paterno avitoque fidere par videtur.* Idem.

(d) *Validus alioqui ſpernendis honoribus, & reſpondendum ratus iis quorum rumore arguebatur in ambitionem flexiſſe.* 4. Annal. *Tiberius* denies Temples to be built to his Honour.

(e) *Quia cultui meo veneratio Senatus adjungebatur.*

(f) *Cæterum ut ſemel recepiſſe veniam habuerit; Ita per omnes Provincias effigie numinum ſacrari, ambitioſum & ſuperbum; & vaneſcet Auguſti honor, ſi promiſcuis adulationibus vulgatur.* Idem.

(g) *Hæ mihi in animis veſtris templa, & pulcherrimæ effigies & manſuræ; nam quæ ſaxo ſtruuntur, ſi judicium poſterorum in odium vertit, pro ſepulchris ſperniuntur.* Idem.

Vain-glorious Princes.

(h) Zonaras Annal. Tom. 2. fol. 54.

(i) Plutarc. in Vita.

(k) *Se quidem Jovis filium dici, ſed corporis ægri vitia ſentire.* Curtius lib. 4.

(l) Cælius Rhodig. lib. 3. c. 5.

(m) Pezell. Mellif. Tom. 1. p. 228.

(n) Suetonius, cap. 22.

and had his Temples, Prieſts and Sacrifices, and was deſirous to be worſhipped as a Deity. The like Examples might be produced of *Domitian*, *Diocleſian* and others.

How Princes may admit Honours.

It is to be owned, That the longer ſpace of time is meaſured, ſince theſe kind of adorations were affected by theſe Heathen Emperors, the leſs of eſteem and value they obtain; yet it is worth obſerving likewiſe, what the moſt judicious (*o*) Hiſtorian notes, upon the fore-cited occaſion, That ſome aſcribed the refuſing of theſe Divine Honours to *Tiberius*'s modeſty; others, to the diſtruſt he might have of the Senates reliſhing it well; others interpreted it a Token of a low degenerate Spirit: for, as he obſerves, The beſt of all Mortals have coveted the higheſt Honors; ſo *Hercules* and *Bacchus*, among the *Greeks*, and among the *Romans*, *Quirinus* were added to the Number of the Gods! Therefore he commends *Auguſtus*, that hoped for ſuch Honours, and to ſuch Princes all things elſe are added. For that which he calls a proſperous Memory, he ſaith is principally to be obtained; and concludes, That Fame being contemned, ſo likewiſe are Vertues.

(*o*) *Optima quippe mortalium altiſſima cupere: ſic Herculem & Liberum apud Græcos; Quirinum apud nos deum numero additos—unum inſatiabiliter parandum, proſperam ſui memoriam: nam contemptu Famæ contemni Virtutes.* Ibid.

Honour due to Sovereign Princes.

Although therefore the Vanity of ſuch Emperors, as required this Superfetation of Honour, be juſtly cenſured; yet when we abſtractedly conſider the Soveraignty of Princes, from their Perſonal leſſening of their eſteem, by unkingly Vices; we muſt needs pay the greateſt deference to it, as that which is a lively Shadow of that Divinity, by which Kings Reign.

(*p*) *Majeſtas Imperii ſalutis eſt tutela.*

(*q*) *Tolle Majeſtatem, omniſque hic Imperii contextus in multas partes diſſiliet.* 1. de Clem.

(*r*) *Tot mortalium millibus una anima præſideat. Ille enim vinculum per quod Reſpublica cohæret; Ille ſpiritus vitalis quem hæc tot millia trahunt; nihil ipſa per ſe futura niſi onus & præda, ſi mens illa Imperii ſubtrahatur.* De Clem. lib. 1. c. 3.

So (*p*) *Curtius* tells us, That the Sovereignty is the Defence of that *Salus Populi*; which is the very Ground-Work-ſtone of Government: And *Seneca* truly obſerves, That once (*q*) remove Majeſty, that is, Soveraignty) and the whole Contexture of Government flies into Splinters, or is disjoynted. For without a Soveraignty (beyond which is no Appeal) be lodged ſomewhere, no People can be governed: That (*r*) being that Soul, that Life which enlivens, directs and orders all the Subjects in their ſeveral Capacities; more ſenſibly than the Philoſophers *Æther*, or *Anima Mundi*, doth the *Macrocoſm* or Sublunary World. Therefore *Seneca* ſaith of the Soveraign, That he is the Bond which holds faſt the State together; he is that vital Breath which ſo many Thouſands draw in, which otherwiſe, as a liveleſs and unwieldy Load, would prove a Booty, if that Soul of the Empire were taken away.

(*s*) Ἐντὶ μὲν τῷ Θεῷ, ἐντὶ δ' ἁ τῷ Βασιλεῖ ἀνίῳ μὲν Ἀρχήν, Ἀρχᾶς δ' ὑπ' ὐδένΘ. *Ecphant. apud Stobæum, Serm.* 46.

Kings called Gods, as deriving Authority from God, or his Vicegerents.

Of this Sovereignty of Princes it is, that (*s*) *Ecphantas* the *Pythagorean* ſaith, It is the Priviledge firſt of God, and then of the King, under him, not to be ruled by any: and it may be rationally conceived, that it was from this ſence of abſolute Sovereignty, flowing from the Divine Being that diſpoſeth of the great and weighty Affair of Government; That Sovereigns are both in Scripture, and by Heathen and Chriſtian Writers, called Gods: The import of which Name being a Denomination of a Being, Sovereign over other ſubjected Beings. In the Chapter of

Monarchy

Monarchy I have recited ſome of the expreſſions in Scripture; and for Heathen Writers, one can ſcarce read any Hiſtorian, where their Emperors are not called *Dii* or *Divi*; and in *Juſtinian*, *Divus Imperator* is generally uſed for Emperor.

(t) *Contzen de Rep. lib.* 7. *c.* 4.

So the Majeſtic Pavillions, or Cloath of Eſtate, under which the Emperors uſually ſate, were called οὐρανοὶ, little Heavens, for ſuch Gods to ſit under: and tho' ſome (*v*) affected theſe too much, or had them given them by their Flatterers (as in *Martial* of *Domitian*,

(u) *Sueton. in Domit. c.* 13. *Lib.* 5. *Epig.* 8. & *Lib.* 10. *Epig.* 72.

——*Edictum Domini Deique noſtri*;

and the *Perſian* Monarchs, more than any, affected ſuch Titles, as (*w*) *Rex Regum Sapor, particeps Syderum, Frater Solis & Lunæ*; *Sapor* King of Kings, partaker of the Stars, or one endowed with the Heavenly Nature of the Stars, Brother of the Sun and Moon;) yet if we take theſe Expreſſions in the ſence of the Emperor *Cantacuzen*, it may be allowed: For he ſaith, That abſolutely the Name of Lord, and ſo of God, is only due to God Almighty, and that man hath it, with ſome Addition of Perſon or Place. And we may conſider, that as the Supremacy of Princes and their Governments is delegate from the higheſt (their Judgment being alſo called his) ſo in a general Name they are titled Gods, even by God himſelf, (*y*) becauſe here on Earth, they ſhould, for their Power, be his Imitators; and we find the Apoſtle *Rom.* 13. calls Supreme Governours, *Poteſtates ſupereminentes*.

(w) *Ammian. Marcel. Hiſt.* 17.

(x) Μετὰ προσθήκης ὀνόματος Θ. *Apol.* 6. *adv. Mahomet.*

(y) *Sthenid. Pythag. apud Stobæum. Ser.* 46. Ἐξουσίαις ὑπερέχουσαι.

In the *Codes* we frequently read (long after Chriſtianity was received) *noſtra Divinitas*, *noſtra Perennitas*, *noſtra Æternitas*, *Divinæ Vocis Oraculum*: Yet we find the Chriſtian Fathers refuſing to give the Title of God to the Heathen Emperors. So (*z*) *Socrates* ſaith, He doubts he ſhall be reprehended of ſome, becauſe he did not ſtile the Emperors moſt Divine, and Lords, and by other Titles, which the uſe of times had allowed: And (*a*) *Tertullian* ſaith, That he cannot call the Emperor God, either becauſe he cannot lie, or dare not mock him; or becauſe he will not be ſo ſtiled, who is a Man: For he denies him (ſaith he) to be Emperor, who calls him a God; for unleſs he be a Man, he is no Emperor.

(z) *Hiſt. Eccleſ. lib.* 6. *in Proœm.* Θειοτάτους, καὶ Δεσπότας, καὶ ὅσα χρηματίζειν εἰώθασιν.

(a) *Negat illum Imperatorem qui deum dicit; niſi homo ſit, non eſt Imperator.* Apol. c. 33.

This ſtile of God, the *Samaritans* gave to *Antiochus* (*b*) *Epiphanes*, ſtiling him in their Epiſtles, God, who had, to his utmoſt, defiled the Temple of the true God: So the *Jews* in their (*c*) Acclamations, ſtiled *Herod Agrippa*, no longer Man but a Deity; and (*d*) *Mezentius*, commanding his Subjects to offer unto him all ſuch Sacrifices as they had Deſtinated to the Gods, profeſſing withal, that no Deity was above himſelf; juſtly deſerved the Title of *contemptor Divûm*.

(b) *Joſeph. Archæol.* 12. *c.* 7.

(c) *Act. Apoſt.* 12. *v.* 22.

(d) *Cato in Orig. apud Macrob.*

The obſequious Impiety in the Elder times (ſaith (*) Mr. *Selden*) of attributing the Name of God to the Emperors, was

* Titles of Honour, part 1. c. 4.

was the Cauſe, it ſeems, that, as well in the Chriſtian as Heatheniſh Times and States, the Subjects of the Empire continued that ill Cuſtom of ſwearing by their Princes: So in *Antoninus*'s and *Commodus*'s time, it was uſual to ſwear *per Genium Principis, & per Principis Venerationem*, as it is in a Reſcript of (e) *Alexander Severus*; under whom the learned (f) *Tertullian* upbraids the *Romans*, that they readilier forſwore themſelves by all the Gods, than by the one Genius of *Cæſar*. So *Horace* ſpeaking of *Auguſtus*, ſaith,

Swearing by the Prince.

(e) *Conſtit. Alex. Sev. c. De rebus creditis.*

(f) *Citius per omnes Deos, quam per unum Genium Cæſaris pejeratur.* Apol. c. 28.

Jurandaſq; tuum per Nomen ponimus Aras:

and (g) *Vegetius* gives the Reaſon for it, becauſe to the Emperor, when he takes the Name of *Auguſtus* upon him, faithful Devotion is to be exhibited, and watchful Service, as to a preſent and corporal God. For he that is a private, or a military Perſon, ſerves God, when he faithfully loves him who governeth by Gods Authority: from whence and many other Authorities the great *Selden* ſaith it appears, how, both among Chriſtians, Mahometans and Heathens, a certain *Sanctitas Regum* (as in *Suetonius*, *Julius Cæſar* calls it) was ſpecially regarded; and he inſtanceth in many Nations who had a Deities Name in the Kings; as from *Baal* and *Aſtaroth*, *Beleaſtartus*, *Abdaſtartus*, *Ithobaal*; ſo from *Nebo* a *Babylonian* Idol, *Nebuchodonezar*, *Nabopollaſſar*; ſo from *Belin* or *Abellio*, a *Britiſh* Deity, *Caſſebelin*, *Cynobelin*. All which ſeem not only to be the Affectation of the Princes, but to be intended to denote the Divine Character that Princes bore.

(g) *Nam Imperatori cum Auguſti nomen accepit, tanquam præſenti & corporali Deo fidelis præſtanda eſt devotio, & impendendus pervigil famulatus: Deo enim vel privatus, vel militans ſervit, cum fideliter eum diligit, qui Deo regnat autore.* Veget. de Re milit. c. 5.

The Names of Heathen Deities in the Names of Kings.

Titles of firſt Founders of Empires continued to Succeſſors. *Cæſar.*

Hence we may Note, That the Name of *Cæſar* and *Czar* is uſed by all the *German* and *Muſcovite* Emperors: becauſe the *Roman* Empire was founded by *Julius Cæſar*; and this Cuſtom was of older Date: For in Holy Story, all the *Ægyptian* Kings, 'till *Solomon*'s time, are called *Pharaoh*; which was not a proper Name or Sirname of a Family, but only a Title which every one had belonging to him, as he was King; which, as *Manetho* ſaith, begun in *Pharaoh Narecho*, and *Joſephus* ſaith in *Menis*, much ancienter than *Abraham*; but *Suidas* is poſitive, That it was derived from the firſt King, or him that firſt had that name: So from *Ptolomy* the Son of *Lagus*, his Succeſſors were called *Ptolomies*: So the *Parthian* Princes, from *Arſaces* (their firſt great Monarch) were called *Arſaces*; according to whoſe Memory, ſaith (h) *Juſtin*, the *Parthians* attributed that Honour, that all their Kings, from thence forward, were called *Arſaces*.

(h) *Cujus memoriæ hunc honorem Parthi tribuerunt, ut omnes exinde Reges ſuos Arſacis nomine nuncupent.* Hiſt. lib. 41.

So the Title of *Auguſtus* was given to *Octavius*, next Succeſſor to *Julius*, by the Senate, as if he had been ſomething more than Human, ſaith (i) *Dio*: And as (k) *Suetonius* ſaith, not only by a new, but a more ample Sirname, becauſe, that all Religious places, in which any thing Augurly was conſecrated, were called *Auguſta*; for which he cites *Ennius*,

(i) Ὡς καὶ πλεῖόν τι, ἢ καθ' ἀνθρώπους, ὄν. *In vita.*

(k) *Non tantum novo, ſed etiam ampliore, cognomine, quod loca quæque Religioſa & in quibus Augurato quid conſecratur,* Auguſta *dicuntur.*

Auguſto

Auguſto Augurio, poſtq; inclyta condita Roma eſt.

This came from *Augeo*, which (beſides the common ſenſe of it) is a proper word enough to ſacrifice, as *augere Hoſtias*; and in *Sextus Pompeius Auguſtus* is interpreted *Sanctus*; the *Greeks* interpret it by Σέβαστος, or Venerable or moſt honourable; and it ſeems to be tranſlated from the holy Uſe of the Word, whence it was derived: and as (*l*) *Dio* ſaith, a Deſignation of the ſplendor or greatneſs of their Dignity, the Emperors after were ſtiled *Cæſares Auguſti*; neither of the words denoting any Power in them; but are now, and ever ſince the firſt Family ended, honorary. According to this kind of continuance of Names in Succeſſion, are thoſe *Patronymics* of *Achemenidæ* in the *Perſian* Kings, *Alevadæ* in the *Theſſalian*, *Cecropidæ* in the *Athenian*; from *Achemenes*, *Alevas*, *Cecrops*: So the *Alban* Kings in *Italy*, had every of them the addition of *Sylvius*, moſt of the *Bithynian* Kings were called *Nicomedes*.

(*l*) Τῆς τῦ ἀξιώματος λαμπρότητος. *In vita.*

In the latter times, the *Conſtantinopolitan* Emperors much affected to give their Children and themſelves, the great Name of *Conſtantine*. So were the *Daniſh* Kings anciently titled *Shieldungs* from their King *Shield*: The *French* had their *Merovings*, and the old *Kentiſh* Kingdom here its *Oiſcings* from *Merove* and *Oiſca*. Concerning this ſucceſſive aſſuming ſuch honorary Names from the firſt Families, the curious Reader may obſerve many more in the moſt diſquiſitive Mr. *Selden*.

The Reaſon of ſuch Titles.

The uſe I make of it is to ſhow, That Sovereign Princes, as ſome of them affected to derive their Power and Authority from the Deity; ſo others from ſuch as had been more Signal and Eminent in their ſeveral Reigns, that they might with the Title, ſeem to derive a Fame, Glory and Authority from them, and in thoſe Attributes, be judged their rightful Succeſſors.

Of the firſt Kings from *Adam*.

Before I treat of ſome Attributes that are given to Sovereign Princes, I ſhall take notice of ſome things I have either omitted, or leſs fully explained in the Chapter of Monarchy; eſpecially conſidering it will give ſome light to the Authority and Sovereignty, many learned Men have aſcribed to Princes in general.

(*m*) *Cedrenus* makes *Adam* the firſt King and Governour, when he ſaith he governed or commanded all mankind as long as he lived, and *Seth* ſucceeded him in the Empire: and if we may believe the Letter of *Alexander* the Great to *Ariſtotle*, mentioned by (*n*) *Joſeph Ben Gorion* a *Jew*, and *Rabbi Abraham*, *Zacuthius* and others, *Kenan* the Son of *Enoch*, Grandchild of *Seth*, was Emperor over all the World. In *Beroſus* we find the Kings of *Chaldæa*, that were before the Flood; were *Alorus*, *Alaſparus*, *Amchon*, *Amenon*, *Metalarus*, *Daorus*, *Adorachus*, *Amphis*, *Ottartes* and *Xiſuther*; which according to *Cedrenus* and others, was *Noah*: From him the Greek Authors derive the ſupreme Monarchy of the Earth to *Sem*.

(*m*) Οὗτος ἡγεμόνευσε τῦ γένους τῶν Ἀνθρώπων δι' ὅλης αὐτῦ τ ζωῆς. *Cedrenus.*

(*n*) *Lib.* 2. *c.* 11.

The

The firſt Kingdom from *Nimrod.*

The firſt mention in Holy Writ of a Kingdom, is that of *Nimrod*'s; of whom *Moſes* ſaith, The beginning of his Kingdom was in *Babel*, *Erech*, *Acad*, and *Calna*, in the Land of *Sinaar*: and he is by moſt Writers judged the Founder of the *Aſſyrian* Monarchy, which he had begun about the Forty fifth Year of *Abraham*. *Cedrenus* ſaith, The *Aſſyrians* made *Nimrod* a God, and placed him among the Stars of Heaven, and called him *Orion*. In his Age (ſaith the Judicious (*o*) *Selden*) there was ſo general a Propagation of this Title of King over the Earth, that there is ſcarce a Nation whereof there is Memory in thoſe Ages, without a King, or Prince, or Monarch aſſigned to it. So, beſides the Diviſion of the Earth among *Noah*'s Poſterity, (ſaid in Scripture to be according to their Language, and according to the Families in their Nations) we find in Profane Hiſtories, that the Kingdom of the *Sicyonians* began in *Ægialeus*, that of *Tanaus* in *Scythia*, and of *Vexoris* in *Ægypt*; and others are caſt in, in the Age of *Nimrod*. In the Holy Text alſo are frequent Occurrences of Kings to be referred to that Age; as that of *Abraham*'s Wars with *Kedorlaomer* King of *Elam*, and the Kings of divers other Nations are mentioned; whence it is, (*p*) *Cedrenus* ſaith, that about *Serug*'s days (who was born about 170 Years after the Flood) Men arrogating to themſelves Power over each other, made themſelves Emperours and Kings, and did firſt uſe Arms, and made War on each other.

(*o*) *Tit. Hon. c.* 1. *p.* 10.

Kings firſt Governours in all Countries.

(*p*) Οἱ Ἄνθρωποι τὸ πρὶν καθ' ἀλλήλων ἀυξήσαντες πύρον σεσπαγάς τε ἑαυτὲς καταπέσησάντε καὶ βασιλεῖς.

Afterwards, the Courſe of the Holy Story ſhews us the ſame, not only naming expreſly the particular Kings (which had been made either by Sword or by Choice), but ſaith, The *Iſraelites* deſired *Samuel* to give them a King, to judge them, according as all other Nations had.

Although, ſaith Mr. *Selden*, divers of the chiefeſt States of the old *Grecians* (and I think (ſaith he) only of the *Grecians* in the elder Ages) were in their moſt flouriſhing Times Democracies, or Optimacies; yet the more ancient States there, were in every place Monarchies, as is expreſly noted by (*q*) *Pauſanias*, That every where in *Greece*, in the ancient Times, their States were Monarchical, and not Popular.

(*q*) Βασιλεῖαι πανταχοῦ τῆς Ἑλλάδος καὶ ἡ Δημοκρατίαι, πάλαι καθεστήκεσαν. *In Bœoticis.*

Having premiſed this, I come now to the Epithets given to ſuch Sovereign Princes, as Kings, Emperours, Lords, and the Attributes of Majeſty, *&c.* in the Abſtract, or in the ſecond or third Perſon, and other high and lofty Titles given to them, either juſtly, or by Flattery.

The Title of Kings.

Concerning Kings, the Account that I have given of them in the Chapter of Monarchy, may ſuffice. I ſhall only add, That in the *Aſſyrian* Empire, *Nebuchodonoſor* is ſtyled King of Kings; and after the tranſlation of this Empire to the *Perſians*, *Artaxerxes Mnemon*, in his Commiſſion to *Ezra* for the Reſtitution of *Jeruſalem*, and the Temple, thus ſalutes him; *Artaxerxes King of Kings, to Ezra the Prieſt*: And on the Great *Cyrus* his Tomb this Epitaph was written in *Perſian* Characters, (if you believe the Authors that have it), (*r*) Ἐγὼ Κῦ-

Daniel, c. 2.

(r) Ἐνθαδ' ἐγὼ Κύρος Βασιλεὺς Βασιλέων. (r) *Euſtach. ad Dionyſ. & Strab. Geog.* 15.

Here I Cyrus *lie, who was King of Kings.*

And the bare Name of ὁ Βασιλεύς, the King, without addition, is eſpecially uſed for the *Perſian*; whence the Nation is ſtyled alſo, Ἀσίης βασιλεύτατον ἔθνος, *The moſt Kingly Nation.* (s) *Seſooſis*, the ſame with *Seſoſtris* in *Herodotus*, King of *Egypt*, attributed to himſelf the Title of King of Kings, in his erected Columns of Victory: And (t) *Plutarch* reports, That *Tigranes* King of *Armenia* was angry, and would not vouchſafe to anſwer *Lucullus*, becauſe in his Letter he had ſtyled him King only, and not King of Kings. (s) *Diodor. bibl.* a.

(t) Ὅτι Βασιλέα μόνον αὐτὸν, ἐ Βασιλέων ἐν τῇ ἐπιστολῇ προσηγόρευσεν.

The Acknowledgment of Regal Supremacy, paid by way of Homage, from Princes or People, under the Subjection of ſuch Kings, was the Acceptance, upon their Demand, of Earth and Water: A ſpecial Example of which, is in (u) *Darius*'s Letters to *Indathyrſus* King of the *Scythians*; where he firſt invites him to the Field: but if he would not, then, bringing to the Sovereign as Gifts, Water and Earth, come to a Parley; as the Words run. So in the *Aſſyrian* Empire, the King commands (w) *Olophernes*, That he ſhould bid all the Weſtern Nations prepare him Earth and Water. By the yielding up of theſe two Elements, they acknowledged a giving up to thoſe Sovereigns their Juriſdiction over them.

Earth and Water given as Tokens of Homage.

(u) Δεσπότῃ τῷ σῷ δῶρα φέρων γῆν καὶ ὕδωρ ἦλθε ἐς λόγους. *Herodot. in Melpom.*

(w) Ἑτοιμάζειν μοὶ γῆν καὶ ὕδωρ. *Lib. Judith.*

When *William the Conqueror* landed at (x) *Haſtings* in *Suſſex*, as he came out of his Ship, he fell down; and one of his Knights told him, *Sir, you have poſſeſſion of* England, *and ſhall be King:* and obſerving that he had took up Sand and Earth in his Hand, he added, *And you have taken Livery and Seiſin of the Country.* So when Land is ſold in *England*, the way of receiving Poſſeſſion is by delivering a Clod of the Earth, and a Twig of Wood, if any be growing on it. (x) *Malmesb. de Geſtis Reg. lib.* 3. *Hiſt. Norman. apud Camd.*

To denote alſo the Sovereignty of ſuch Princes, kiſſing of the Feet, or embracing their Knees, or Adoration was uſed. (y) *Herodotus* ſaith, When the old *Perſians* meet, you may know whether they be equal or not: for in Salutation they kiſs one another; but if one be ſomething inferiour, they kiſs only the Cheeks; and if one be far more ignoble, he falls down, adoring the other. The manner of which Adoration is yet obſerved in the Eaſtern Empires, as may be ſeen in the Prints of them in Mr. *Ogilby*'s *Aſia*, eſpecially in *Japan*. Thence we have *Adorari more Perſarum*, and Νόμοισι Βαρβάροισι, which is expreſſed by *Euripides* thus, perſonating *Phrygius* to *Oreſtes*,

Kiſſing the Feet, Knees, and Hands of Princes.

(y) Προσκυνῶν προσκυνέει ἢ ἴσον.

Περσικῶν σ' Ἄναξ νόμοισι Βαρβάροισι
Προσπεσεῖν ———

Falling down, I adore thee, O King, after the Perſian *manner.*

In

In *Alexander*'s turning the *Grecian* Liberty into this Servitude, *Q. Curtius* expreſſeth it by *Venerari, procumbere, & humi corpus proſternere*; and thereof *Juſtin* ſaith, the (z) *Macedonians* retained the manner of ſaluting their Kings, exploding the Adoration. *Lampridius*, ſpeaking of *Alexander Severus*, ſaith, That he forbad himſelf to be adored; but *Heliogabalus* began to be adored after the *Perſian* manner.

(z) *Retentus eſt a Macedonibus mos ſalutandi Reges, exploſa adoratione.*

Jam cœpiſſet Heliogabalus adorari Regum more Perſarum.

As to the Kiſſing, the Learned (a) *Selden* ſaith, It was uſual in Adoration among the *Romans*, either to kiſs the Images of their Gods, or adoring them, to ſtand ſomewhat off before them, (b) ſolemnly moving the Right-hand to the Lips, and then caſting it, as if they had caſt Kiſſes, and turning the Body on the ſame Hand, (which was the right Form of Adoration): and it grew by Cuſtom, firſt, that the Emperours (being next to Deities, and by ſome accounted as Deities) had the like done to them, in acknowledgment of their Greatneſs. After ſome of the *Roman* Emperours would be called *Jupiter*, be ſuppoſed carnally to lie with *Venus* and the *Moon*, and (upon their infinite ſuch-like frantick Conceits) pretended themſelves to be Divine, they were not ſatisfied with thoſe uſual Cuſtoms, but thought themſelves much wronged, and their Majeſty impaired, if they who ſaluted them (c) preſumed to kiſs above the Knee. We find Examples of kiſſing the Hands and Feet in *Caligula*: Therefore (d) *Seneca* (ſpeaking of his offering his Feet to kiſs) ſays, He was a man born to that, ſo as to change the Cuſtoms of a Free City into *Perſian* Servitude. *Maximinus Junior* allowed the kiſſing the Knees, Feet, and Hands; and *Diocletian* (according to *Pomponius Lætus*) publiſhed an (e) Edict, That all without diſtinction, being proſtrate, ſhould kiſs the Feet; therefore he adorned his Shoes with Gold, Gems, and Pearl. Yet this was not allowed by all: For *Tiberius* (as *Suetonius* tells us) *oſcula quotidiana prohibuit edicto*; and the elder (f) *Maximin* (although a Tyrannical and moſt wicked Prince, yet) would ſuffer none to kiſs his Feet, ſaying, The Gods forbid that any Freeman kiſs my Feet: And *Alexander Severus* was only ſaluted by his Name, *God ſave thee, Alexander*; as *Lampridius* tells us, who adds, That if any bowed the Head, or ſpoke any thing like a Flatterer, if his Quality permitted, he was ſpurned away; or, if his Dignity allowed not ſuch an Injury to be done him, he was laughed at aloud. And (g) *Martial*, in *Trajan*'s time, rejects thoſe baſe Flatteries that had been uſed to *Domitian*, thus.

(a) *Tit. Hon. c.* 3.

(b) *Cicero in Varr. Act.* 5. *Lucret. lib.* 1. *Sæpe ſalutantum, &c.*

(c) *Dio Caſſ. Hiſt.* 59.

(d) *Homo natus in hoc, ut mores liberæ civitatis Perſica ſervitute mutaret.* 2. de Benef. c. 5.

(e) *Ubi omnes ſine generis diſcrimine proſtrati pedes exoſcularentur, exornans calceamenta auro, gemmis & margaritis.*

(f) *Dii probibeant ut quiſquam ingenuorum pedibus meis oſculum figat.* Capitolin.

(g) *Lib.* 10. *Epig.* 72.

Ad Parthos procul ite Pileatos,
Inopes, humileſque, ſuppliceſque,
Pictorum ſola baſiate Regum.

Princes uſe now only the kiſſing of the Hand (beſides a profound Obeiſance to them) in ſtead of theſe forementioned Adorations; and the kiſſing of the Hand is offered frequently as

as a Teſtimony of ſerviceable Love to other Great Perſons, according to that of (*h*) *Pliny*, As the Back of the Right-hand with a kind of Religiouſneſs is deſired, ſo with an aſſurance of Faith it is ſtretched out.

(*h*) *Ineſt in aliis partibus quædam Religio ſicut dextra oſculis averſa appetitur, fide porrigitur.*

This Name of King was among the *Romans* (after they ſetled themſelves under the Government of a Commonwealth) reputed ſo contrary to their Liberty, (as implying in its Office too great an Abſoluteneſs of Power) that in ſolemn memory of its being caſt out by *Brutus*, they yearly celebrated on the Seventh of the Kalends of *March* (our Twenty third of *February*) their Feaſt *Regifugium*: And leſt the giddy Multitude might deſire again to have a King, they prohibited that no Concourſe for Merchandiſe ſhould ever happen upon the Nones of any Month, (King *Servius Tullius* his Birth-day, they knew, was in the Nones, but not of what Month; therefore they provided it) fearing (ſaith (*i*) *Macrobius*) leſt the Multitude, gathered together at ſuch Fairs, ſhould innovate any thing by the deſire of a King: And (*k*) *Cicero*, though he acknowledged that *Cæſar* was *revera Rex*, fully a King in Power, yet (upon hate that continued of that Title) tells us, That hereafter neither Gods nor Men would permit any to be King of *Rome*. Therefore to palliate (as Mr. (*l*) *Selden* ſaith) ſome part of his Ambitions, *Cæſar* himſelf, being ſaluted King by the Multitude, withal perceiving that it was very diſtaſteful to the State, (by the *Tribunes* pulling of the white Fillet from his Laurel) anſwered, *Cæſarem ſe, non Regem eſſe*; refuſing it utterly, and conſecrating the Diadem, which *Anthony* would have often put upon his Head, to *Jupiter*. Yet the whole People were ſenſible that his Authority differed only in Name from that of King, as appeared by his Sentiment of it, who ſubſcribed *Julius* his Statue with,

The *Romans*, after they were a Commonwealth, hated the Name of *King*.

(*i*) *Veriti ne quid nundinis collecta univerſitas, ob Regis deſiderium, novaret.* Saturnal. c. 13.

(*k*) *Regem Romæ poſthac nec Dii nec homines eſſe patientur.* De Divinatione, cap. 2.

(*l*) *Tit. Hon. cap.* 2. *Auguſtus* denies the Title of King.

Brutus quia Reges ejecit, Conſul primo factus eſt;
Hic, quia Conſules ejecit, Rex poſtremo factus eſt.

Thus much may ſuffice to ſhew, That the *Romans* judged a King to have ſuch Abſoluteneſs, as in their Free-State was not to be endured; when as in the Change to Emperours they underwent more (by ſome of their Arbitrary Rulings) than they did under Kings: And though the Terms were milder, yet the Yoke of them was heavier. But ſuch is the Nature of the Multitude, that if their Governours keep but the old Name of the Magiſtracy, they readilier yield Obedience to them; ſuch power hath Cuſtom. This Obſervation made *Cromwel* content himſelf with the Name of *Protector*, under which, by his Arts and Army, he exerciſed more Arbitrarineſs than ever had been by any King of *England*.

Becauſe the Abſoluteneſs of Kings was againſt their Liberty.

I come now to the Title of Emperour. This at the firſt only denoted a General, or Leader of an Army. So *Julius Cæſar* (having made himſelf Maſter of the *Roman* Free-State) thought

Title of Emperour firſt as General.

it ſafer to retain than innovate his Title of Supremacy. Therefore having the perpetual Office of (*m*) Dictator and Conſulſhip, with the place of General or *Imperator* (as the word had Relation to his Military Force) he took that alſo (being as willingly given as the reſt) for a perpetual Title; this Title of *Imperator* being aſſumed both by *Brutus* and *Caſſius*; as appears in their Coins, though theypretended to be the greateſt aſſerters of the *Roman* Liberty, and the like occurrs in the Coins of *Antonius*, *Lepidus*, and the thirty Tyrants, and others.

(*m*) *Honores nimios recepit, ut continuum conſulatum, perpetuam Dictaturam, præfecturamque morum, inſuper prænomen Imperatoris.* Sueton. de Jul. Cæſare.

This Title of *Imperator* is ſaid to have been a (*n*) *Prænomen*, by *Suetonius*, but it was often uſed after it, which when it was, it denoted either only, or chiefly, ſome great performance by Arms, in ſetling, or encreaſing the Empire; but when a Sirname, in thoſe elder times, it ſignified only the Emperor's Supremacy in the State; ſo in the Coin of *Auguſtus*, where the Inſcription is, *IMP. CÆS. AUG. IMP. IX. TR. P.V.* The Fore-name *Imperator*, ſignifies his Supremacy; and the latter ſignifies he had been General, and as ſuch, it may be, deſerved a Triumph nine times. The *TR. P. V.* For *Tribunitiæ poteſtatis quintum*, ſhews how often he had been Tribune of the People, which was every Year renewed; therefore in that the number of the Years of their Empire was expreſſed, as (*o*) *Dio* obſerves. So that what *Tacitus* relates of *Tiberius*, was moſt true, that *eadem Magiſtratuum vocabula*, he retained the old Names of the Magiſtrates; ſo that the firſt Emperors Authority and Soveraignty conſiſted in the Power of the Conſuls, Dictator, Tribunes of the People, and the Title of Prince.

(*n*) *Vita Jul. Cæſ. ſupra.*

(*o*) *Caſſius, Hiſt.* 53.

Title of Prince.

The Title of *Princeps*, *Principatus* and *Principium*, were proper Names alſo for theſe Emperors, and their greatneſs; therefore (*p*) *Tacitus* ſaith, that *Auguſtus* took the Empire under the name of Prince, all being wearied with civil Diſcords; though *Suetonius* ſaith of *Caligula*, that Title was wanting, but that he ſhould ſuddenly take the Diadem, and change the ſhow of a Principality to the form of a Kingdom. Now it is to be obſerved as the Title of Emperor was taken from the Military Employment of a General; ſo this of Prince ſignified the Superiority of them in the Senate. For the Title of *Princeps Senatus* was known familiarly in *Rome*, and ſo might upon that Ground be uſed without Envy.

(*p*) *Auguſtus cuncta diſcordiis civilibus feſſa, nomine Principis ſub Imperium accepit.*

Concerning the *Grecians* uſing Βασιλεὺς for Emperor, the difference betwixt the Eaſtern and Weſtern Empire, about both their Titles, and the more modern uſe of both, I muſt referr the Inquiſitive Reader to the often, but never too much to be commended (*q*) Mr. *Selden*; and ſhall only note out of him, that divers *Civilians*, eſpecially of *Italy* and *Germany*, which profeſs the old Laws of *Rome*, tell us, That the Emperor is at this day of Right, Lord of the whole World, or Earth, as their Text alſo (*r*) affirms: beſides divers other flattering Paſſages in good Authors, of the ancient Empire; as that of *Corippus* to the Emperor *Juſtin*, ---*Deus*

(*q*) *Titles of Honour, par.* 1. *c.* 2.

(*r*) Ἀξίωσις. *F. ad Leg. Rhod.*

The *Roman* Emperours not Lords of all.

——*Deus omnia Regna*
Sub pedibus debit eſſe ſuis.

And *Julius Firmicus* (*s*) hath this courtly Expreſſion, That the Compaſs of the whole Globe of the Earth is ſubject to the Power of the Emperor, and he is conſtituted in the number of thoſe Deities whom the Principal Divinity hath appointed to do and conſerve all things; grounded upon that Coin of (*t*) *Conſtantius*, which hath on the reverſe *VICTOR OMNIUM GENTIUM.* But Mr. *Selden* hath ſufficiently confuted this, by ſhewing that the *Roman* Empire had its Limits (or as *Tacitus* calls it its *Clauſtra*) in *Auguſtus*, *Trajan*'s, and *Hadrian*'s time, and that in the heighth of the *Roman* Empire there were *Liberi Populi, Regeſque.* So that after the peruſal of the ſeveral Inſtances he produceth, none can be unſatisfied, but that many other Princes enjoy their Supremacy as fully as the *German* Emperors, in acknowledging no Superior but God, as particularly I ſhall ſhew, in what relates to *England*, in the next Chapter.

(*s*) *Totius orbis terrarum ſpacium Imperatoris ſubjacet poteſtatibus, etiam ipſum eorum Deorum numero conſtitutum eſſe quem ad facienda & conſervanda omnia, Divinitas ſtatuit univerſalis.* Matheſ. lib. 2. c. 33.

(*t*) *Adolphus Occa, p.* 552.

For the fuller Expreſſion of Majeſty, ſaith (*u*) Mr. *Selden*, other Attributes have been given to Supream Princes, which be Names as eſſential as thoſe of Emperor and King; yet they are not ſo convertible with them, nor ſo particularly deſigning them: Theſe are chiefly *Domini & Dii*, Lords and Gods. Of the one I have diſcourſed before, of the other I ſhall now ſpeak ſomething.

(*u*) *Tit. Hon. cap.* 4.

This Title of *Dominus*, or Lord, (importing properly a Maſter or Lord over Slaves) was by the wiſeſt of the *Roman* Emperors rejected; though it be now grown (*w*) ſo familiar, that we uſe it to Tradeſmen: ſuch a change being wrought by time in the Uſage, Emphaſis or Signification of many other words.

Of the Title of Lord.

How odious to the *Romans*.

(*w*) *Nedum ſermonum ſtet bonos & gratia vivax.* Horat. de Arte Poet.

(*x*) *Suetonius* tells us, that *Auguſtus* at a Play, hearing himſelf called Lord, though with the Epithetes of Juſt and Good, and finding the Spectators rejoicingly approve of it as applicable to him; with his Hand and Countenance repreſſed the unbecoming Flatteries, and the next day by a ſevere Edict, prohibited it to be given him; neither would he ſuffer his Children or Nephews to uſe it in their Complements, or other Language, to each other. Neither would *Tiberius* endure this Title ſo much as in common Salutation: whereupon the great (*y*) Hiſtorian and States-man obſerves, *Unde Auguſta & lubrica oratio, ſub Principe, qui libertatem metuebat & adulationem oderat.* To which purpoſe (*z*) *Statius* ſpeaks of *Domitian.*

(*x*) *Domini Appellationem ut maledictum & opprobrium ſemper exhorruit.*

(*y*) *Tacitus* 2. *Annal.*

(*z*) *Sylvar.* 1.

Tollunt Innumeras ad aſtra Voces
Saturnalia Principis ſonantes,
Et dulci DOMINUM favore clamant,
Hoc ſolum vetuit licere Cæſar.

Yet either the Poet flattered or diſſembled, or this was in the Infancy of the Empire; for we find in (*a*) *Suetonius*, that by his expreſs Command, the Titles of his Letters and other matters, were *Dominus & Deus noſter ſic fieri jubet*; and *Caligula* before him, endured it publickly, and *Feſtus* (*b*) Lieutenant of *Jewry* in that of St. *Paul*'s appeal, calls *Claudius* abſolutely Lord, κύριε. So *Eudæmon* in his Petition to (*c*) *Antoninus* calls him Κύριε Βασιλεῦ Ἀντωνῖνε, *i. e.* Lord Emperor; and the Emperor in his Anſwer calls himſelf Lord of the World. (*d*) *Victor* ſaith that *Dioclesian*, the firſt of all the Emperors after *Caligula* and *Domitian*, ſuffered himſelf openly to be called Lord, to be adored and ſtiled as a God; which may be underſtood of publick Salutations only. For in *Claudius* and *Antonine* I have inſtanced to the contrary. Alſo in a Gold Coin of the great and Religious *Conſtantine*, ſtampt with his Effigies ſitting, and his Court of Guard about him; the (*e*) Inſcription is, *FELICITAS PERPETUA AUGEAT REM DOMIN. NOST.*

(*a*) *In Domit. c.* 13.

(*b*) *Act. Apoſt. c.* 25. *v.* 26.

(*c*) *Mæt. F. ad Leg. Rhod.*

(*d*) *Diocletianus ſe primus omnium, Caligulam poſt Domitianumque Dominum palam dici paſſus, & adorari ſe, appellarique uti Deum.*

(*e*) *Adolph. Occa, p.* 537.

The reaſon why ſome Emperors refuſed this Name (as *Pliny* in his *Panegyrick* makes (*f*) *Trajan* to do, when he ſaith, Thou obtaineſt the place of the Prince, that there may be no place for Lord,) was either becauſe it ſeemed a Relative to *Servus*, a Bondſlave; or in reſpect that it ſuppoſed (if ill interpreted) the Subject, and his Subſtance to be in the Property of the Emperor: For (*g*) *Ulpian* tells us, that in the Laws of the Empire, in the Appellation of Lord, was ſignified he that had the Propriety, although another was Uſufructuary. How conſiderable a Name of Dominion this was, appears in *Lucan* (who being one of the *Pompeian* Party, that ſtood much upon the ancient Liberty of *Rome*,) ſaith that that Age firſt found thoſe Appellations, by which they lyed to the Lords.

(*f*) *Principis ſedem obtines, ne ſit Domino locus.*

(*g*) *Domini Appellatione continetur qui habet proprietatem, etſi uſus fructus alienus ſit.* Ulp. F. de Sc. Silaniano, l. 1. ſect. 1.

(*h*) *Namque omnes Voces, per quas jam tempore tanto*
Mentimur Dominis, hæc primum reperit Ætas.

(*b*) *Lucan. Pharſal. lib.* 5.

That which I obſerve from hence is, That by this Title of *Dominus*, the Soveraignty of Princes, and greater abſoluteneſs was underſtood, than the firſt Emperors were willing to ſeem to allow, that they might avoid Envy in the Infancy of their Power: and now ſo great a Power or Dignity is not ſo much underſtood by the Word, either *Latin* or *Greek*, in the Perſon it is applied to, as when our Kings had the Title of Lords only of *Ireland*, and yet had Kingly Supremacy; and now our Nobility are called Lords, and *Domine* in the Latin is dwindled to ſignify any Gentleman.

Multa renaſcentur quæ jam cecidere, cadentque,
Quæ nunc ſunt in honore vocabula ſi volet uſus. Horat. de Arte Poet. v. 70.

The Appellations in the Plural Number.

There are other Forms of Speech that either have been or are peculiar to Kings, as the uſe of the Plural Number, as, We command, We ordain, Our Royal Favour, Our Royal Care, Pleaſure, *&c.* This ſeems derived from the *Jews* (ſaith (*i*) Mr. *Selden*) who ſay that in their Language, by reaſon of the Plurality of Vertues or Power (being the true Roots of Dignities) which

(*i*) *Tit. Hon. par.* 1. *c.* 7.

which are ſuppoſed in a Superior, they uſe the Plural Number to or of one Man. So with their Elohim Gods, joined to a Word of the Singular Number, is by their *Grammarians*, made an Enallage of Number, chiefly to expreſs Excellency in the Perſons to whom it is referred. But this hath ſince been uſed by ſingle Perſons, as particularly by *Margaret* Counteſs of *Richmond*, Mother to *Henry* the Seventh, thus, *Nos Margareta Comitiſſa Richmondiæ, Mater excellentiſſimi Principis Domini Henrici*, &c. *Inſpeximus*, &c.

Therefore I leave this as communicable to great and eminent Subjects, and ſhall paſs to the abſtract of *Majeſtas*. As Your Majeſty, His Majeſty, Imperial Majeſty. The word it ſelf denoting all kind of ſpecial Dignity, as if we ſhould ſay in *Engliſh*, Greatneſs, as well in private Perſons, as ſupream Princes and Deities. *Ovid* (*k*) elegantly deſcribes Majeſty to be born of Honour and Reverence, and he ſaith Majeſty continued among the Gods, until the Rebellion of the Giants againſt *Jupiter*, when ſhe ſo daunted them, that afterwards ſhe was honoured for it with a place next to *Jupiter*, whoſe Kingdom ſhe defends by the greatneſs only of her Preſence, and unarmed; and that ſhe came down alſo among Men, ſince which, both Supream and Subordinate Princes, and ſome alſo of all Kinds have had their ſpecial Dignity from her Preſence with them; whence *Majeſtas Pueri*, *Matronæ*, *Virginis*, &c. and, as *Valerius Maximus* (*l*) calls it, a private kind of Magiſtracy, a Majeſty of eminent Men, without the Honour of Tribunalſhip, or any other Office.

Title of Majeſty.

(*k*) *Faſtorum lib.* 5.

But it is not of this kind of Majeſty I now treat; but as it is applicable to the Sovereign. So in *Cicero*, *Majeſtas Populi Romani* denotes the Supream Dignity of the State of *Rome*, as (*m*) *Polybius* calls it the Empire and Power of the People of *Rome*. Afterwards this Majeſty of the People, or of the whole Empire and State was caſt upon the Emperors as a Characteriſtick of Soveraignty, and then it was *Majeſtas Imperatorum*. Whence it grew into frequent uſe to write (*n*) *NUMINI MAJESTATIQUE EJUS DEVOTISS:* or *DICATISSIMUS*, as in that Inſcription in *Tarragona* in St. *Barbara's* Church, of *Septimius Acindynus* to the Emperor *Trajan*.

From the uſe of Majeſty thus applied, came the name of *Crimen Majeſtatis*, to denote that offence which was committed againſt the Dignity of the State of *Rome*, or againſt the Emperor. So (*o*) *Ulpian* ſaith, It is that which is committed againſt the People of *Rome*, or their Security. (*p*) And *Cicero* calls it a Diminution of Majeſty, to draw a Tribune of the People out of the Temple. And *Juſtinian* ſaith, That the (*q*) *Julian* Law of Majeſty, extends its Force againſt them who attempt any thing againſt the Emperor, or the Commonwealth. And for this offence the word *Majeſtas* is uſed ſingly by (*r*) *Pliny* to *Trajan*, That he had wholly taken away the fear of too frequent

(*l*) *Quaſi privata cenſura, majeſtas clarorum virorum ſine Tribunalium faſtigio.* Lib. 3. c. 10.

(*m*) Τὴν Ἀρχὴν καὶ Δυναστείαν τῆς Δήμου τῶν Ῥωμαίων. *In legatione in Fœd. Ætolorum.*

(*n*) *Gruteri Inſcr. p.* 246. *n.* 3.

(*o*) *Majeſtatis crimen illud eſt, quod adverſus Pop. Rom. vel adverſus ſecuritatem ejus committitur.* F. ad Leg. Jul. Majeſt. lib. 5.

(*p*) *Majeſtatem minuiſti quod Tribunum Plebis de Templo dexiſti.* De Invent. lib. 2.

(*q*) *Lex Julia Majeſtatis in eos qui contra Imperatorem vel Rempublicam aliquid moliti ſunt, ſuum vigorem extendit.* Inſtit. Tit. de Publico Judicio.

(*r*) *Hujus tu metum penitus ſuſtuliſti, contentus magnitudine, qua nulli magis caruere, quam qui ſibi majeſtatem vindicabant.* Panegyr.

frequent queſtiou upon that crime, being contented with the greatneſs of his Power or Office, which none more wanted than thoſe that challenged Majeſty to themſelves; as if he had ſaid, that his mild Empire and Greatneſs was better to himſelf and his People, than theirs who had a more abſolute Sovereignty.

This Expreſſion of the Emperors by the abſtract *Majeſtas* (wherewith *Numen* alſo was commonly joyned in Inſcriptions) became, it ſeems, the Example by which the enſuing times brought in the frequency of thoſe other *Abſtracti*, which deſigned the Emperors, as well in the firſt as the ſecond and third Perſon; as *Perennitas*, *Æternitas*, *Tranquillitas*, *Serenitas*, *&c.* which are moſt obvious in the Reſcripts of the old Emperors, that remain in the two *Codes* of *Theodoſius* and *Juſtinian*: And in the *Greek* Empire, this Attribute of Majeſty was denoted by the word Βασιλεία, which the Emperor had, with the Addition of Sacred, and ſometimes with (s) παγγάλεν Βασιλεία, *ſereniſſima jeſtas.*

Ἁγία Βασιλεία.
(s) *Vide Codin.* περὶ ὀφφικ. *Meurſium in Gloſſar. Græco-Barb.*

There are great Numbers of other *Epithetes*, that have been given to Soveraign Princes; as among the *Romans*, *Pius*, *Felix*, *Clemens*, *Tranquillus*, *Sanctiſſimus*, *Pater Patriæ.* In the later times, both in the Empire and Kingdoms, *Clementiſſimus*, *Excellentiſſimus*, *Invictiſſimus*, *Illuſtriſſimus*, *Sereniſſimus*, *Glorioſiſſimus*, *Potentiſſimus*, *Sacratiſſimus*, *Celſiſſimus*, *Religioſiſſimus*; and ſome have had peculiar Attributes: The Emperor is ſtiled *Semper Auguſtus*; the King of *England*, *Fidei Defenſor*; the King of *France*, *Chriſtianiſſimus*; of *Spain*, *Catholicus.*

Other Attributes given to Princes.

Moſt of theſe Attributes were given to denote the Eminence of their place, or the peculiar Vertues ſuch Princes excelled in; and under the *Greek* Empire, the Epithetes agreeable to their Language, and the Attributes of the Eaſtern Monarchs, are to this Day more luxuriant: So we find *Emanuel Comnenus*, in his Letter to *Frederic Barbaroſſa*, writes thus; (t) *Manuel in Chriſto Deo fidelis, Imperator Porphyrogennetus, Divinitus Coronatus, Regnator potens, excelſus, & ſemper Auguſtus & Moderator Romanorum magnificus: Nobiliſſimo & Glorioſiſſimo Regi Almanorum & Imperatori ac dilecto Fratri Imperii noſtri ſalutem.* So (u) *Iſaacus Angelus* uſeth this inſolent Title (as Mr. *Selden* calls it) to the ſame *Barbaroſſa*, *Iſachius a Deo conſtitutus, Imperator Sacratiſſimus, Excellentiſſimus, Potentiſſimus, Sublimis, Moderator Romanorum, Angelus totius Orbis*; *Hæres Coronæ magnæ Conſtantini, Dilecto Fratri Imperii ſui Maximo Principi Alemaniæ*, &c. So the Sirnamed (w) *Emanuel* ſtiled himſelf, Governed by God, Heir of the Crown of *Conſtantine* the Great, and obſerving of his Laws.

(t) *Albertus Stadenſis in Chron. Anno* 1179.

(u) *Caniſ. Antiq. lect. Tom.* 5. *p.* 2.

(w) Θεοκλέεγνης, κληρονόμος τῦ στέμματος τῦ μεγάλυ Κωνσταντίνυ, καὶ νεμόμενος πάντα τὰ τότυ δίκαια. *Camerar. ad auream Andronic. Bullam, p.* 9.

The Grand Seignior (beſides the Enumeration of all his vaſt Dominions) particularly ſtiles himſelf, By the infinite Grace of the juſt, great, and moſt puiſſant Creator, and by the abundance of the Miracles of the chief of his Prophets, Emperor of Victorious Emperors, Diſtributer of the Crowns of the greateſt

teſt Princes of the Earth, *&c.* Lord of *Europe*, *Aſia* and *Africa*, conquered by his victorious Sword and powerful Lance, *&c.* and ſo after the recital of the ſeveral Kingdoms, he ſaith of many other Countries, Villages and Seigneuries, Conquered by his Imperial Power and Juſtice, *&c.* By the Grace of God, the reſort of the great Princes of the World, and the refuge of Honourable Emperors: This was from *Achmet* Son of *Mahomet*, to *Hen.* IV. of *France.*

A late Author, (z) who takes all the Advantages to depreſs Monarchy, out of a pretence of declaring againſt the too great abſoluteneſs of Princes; tells us, That as the Majeſty and real greatneſs of the Emperors declined; and as the Empire began to ſink, the Froth and Flattery came above: ſo that though *Auguſtus* and *Tiberius* forbad any to call them by ſo proud a Title as *Dominus*; yet it was lawful to call *Domitian* Lord and God, and his Succeſſors were not ſatisfied, till complemented in the Abſtract, with Your Everlaſtingneſs, Your Eternity, Divinity, *&c.* and when the wooden Eagle was ſplit in two, that Chip of the Eaſtern Empire brake out into Bloſſoms to a Miracle; that with the *Porphyrogenneti* and *Deſpots*, were blown about the *Sebaſto Cratori*, *Pan-hyperſebaſti*, *protonobiliſſimi*, &c. and that after theſe Titles among the *Romans* (ſo pompous and glorious) had been worn a while at Court, they deſcended to the City and Country: and further tells us, That in *France*, the word Sovereign is commonly uſed for any Superior; as Sovereign of Accounts, Treaſure, Foreſt, Sovereign Judge, Sovereign Bailiff, *&c.*

(z) Treatiſe of Abſolute Power, *p.* 32, 33. Objections againſt the Attributes given to Princes.

To him we may add, what an older (a) Author objects; That it is an Uſurpation of the Attribute only proper to God, to give the Title of Majeſty to Emperors or Kings; and another (b) ſaith, It is a piece of Idolatry to aſſume the Titles of *noſtra Divinitas*, *noſtrum numen*, *Cœleſte Oraculum*, *adorandum Reſcriptum*, &c. Which were uſed by *Theodoſius* and *Valentinian*, and other Chriſtian Emperors, in the firſt and third Perſon, as I have before largely hinted.

(a) *Marcus Antonius ſurgens Neapoli illuſtrata.* Lib. 1. c. 19. ſect. 10.

(b) *Jo. Feliſacus de Idololatria Politica*, c. 1.

To the firſt of theſe I ſhall anſwer, That the reaſon of *Auguſtus* and *Tiberius* declining the Title of *Dominus*, was becauſe in that Age it was underſtood as a Lord over Slaves; which in the firſt ſetling of the Empire, would have cauſed Heart burnings and Rebellions againſt them, in that State, accuſtomed to Freedom. But as the uſage of the word came afterwards to be liquified, and of a benign and ſofter ſignification; ſo there was no reaſon to reject it, eſpecially ſince the Author himſelf (if no Quaker) would not think it unfit in Latin, to be uſed to him as a Gentleman: and as to the invidious Expreſſion of the wooden Eagle, he might have known, that the Ancient *Vexilla* of the Emperors, which had the Eagle upon them, as he may ſee the Figure of them in *Antonius*, and many other Coyns, were not always of Wood; and if ſo gilt with Silver or Gold, but of Metal: But it may be he calls it

Anſwer to the firſt Objector.

it wooden, out of a ſleight to the Authority, or the better to purſue his Allegory of a Chip bloſſoming. However it diſcovers the mean and low opinion he hath of ſuch Supreme Powers. As to the *Hyperbolical* Epithetes of the *Grecian* Emperors; ſomething muſt be yielded to the luxurious exuberance of the *Grecian* Language, and the uſage of the Eaſtern Countries; and that Sovereign is ſunk ſo low in *France*, as to be the Epithete of a Baylive, it may be aſcribed to the Acceptation of the word, in ſignifying any Supreme Officer in his kind, as we call Lord High Treaſurer, Lord High Steward, to diſtinguiſh them from inferior Treaſurers and Stewards.

Anſwer to the other Objectors.

As to the two following Authors, it may be conſidered what the judicious Mr. *Selden* obſerves, That the Title of Majeſty may as well be afforded to them, as of Wiſdom, Power, Clemency, or any other Quality; becauſe thoſe are, as all elſe, which is great or good, principally in God: Therefore (c) *Contzen*, in the laſt Age, Profeſſor of Divinity at *Mentz*, ſaith, That Chriſtian Princes may be called *Divi*, or Gods, becauſe they are Gods Vicars, and do judge by Gods Voice: Yet he thinks that *Divus Imperator*, *noſtra Divinitas*, *noſtra Æternitas*, and ſuch like, are not altogether ſo fit for Chriſtian Princes, for fear both of their arrogating more than they ſhould, when they are ſo magnified; as alſo leſt too much offence be taken by ſuch as may miſs in the Reaſon of the Application of thoſe Titles to them.

(c) *Divi Chriſtiani vocari poſſunt, eo modo quo Dii, quia Dei ſunt vicarii, & Dei voce judicant.* Polit. lib. 7. c. 4. ſect. 4.

We may further note, from the learned *Selden*, That when the *Lacedæmonians* admired a Man, they uſed proverbially to ſay, he is a Divine Man; and the Philoſopher (d) ſaith, That Men became to be reputed or called Gods, from the excellence of their Heroic Vertues; and theſe Vertues and themſelves alſo, were (as he ſays) called Divine, by way of ſome ſimilitude, or by reaſon of Participation with the Deity, being all goodneſs and excellency, as the contrary quality, that is, Inhumanity or Barbarouſneſs is named θηριότης or *Feritas*, becauſe it is moſt like to what is Beſtial. So that as he who affirms, that a Barbarous or Inhuman Fellow, is θηριώδης or Beſtial, makes but an high Expreſſion of his ill nature, not at all ſuppoſing him to be a Beaſt; ſo on the other ſide, *Divinus* or *Divinitas*, or the like expreſſeth only an Admiration of Excellency, which hath its higheſt and firſt Example in the Deity, and is by ſome Similitude or Participation in the Perſon to whom it is attributed. Therefore (e) *Aquinas* ſaith. That anciently, Governours of Commonweals were called Divine, becauſe they were the Miniſters of Divine Providence: They being here upon Earth in their Dominions under God Supreme Governours, undiſputably in *Civils*, as *Philip le Beau* of *France* to Pope *Boniface* the Eighth, in his ſcornful Letter, ſaith, inſtead of *ſciat ſanctitas tua*, *ſciat tua maxima fatuitas nos in temporalibus alicui non ſubeſſe*: That in Temporals he was not ſubject to any.

(d) Θεῖός ἐστιν ἀνὴρ, ἐξ ἀνθρώπων γένους δοκοῦσι δὲ ἀρετῆς ἡρωικῆς ὑπερβολήν. *Ethic.* 7. c. 1.

(e) *Antiquitus Rectores Reipublicæ Divini vocabantur, quaſi Divinæ providentiæ miniſtri* 22. 2æ. Quæſt. 99. Art. 1.

Inſtead

Inſtead of theſe lofty Titles, the modern Sovereigns have contented themſelves with the Addition of *Dei Gratia*, which applied to Lay Princes, doth always ſignifie a Supremacy in their own Dominions.

Concerning the Style of *Dei gratia.*

This Stile begun about *Charles* the (*f*) Great's time, as in ſeveral of his Patents appears; neither did it continue in uſe by his Succeſſors, till about four Hundred years ſince: For *Otho* the Third titled himſelf ſometimes nothing but *Servus Apoſtolorum*; and Mr. *Selden* hath not obſerved it to be uſed by the *Greek* Emperors, but that inſtead of it, they uſed, Crowned of God; the more ordinary and later Expreſſion of them being truſting (*h*) in Chriſt, that is God, or in God Emperor of the *Romans*.

(*f*) *Vide Capitular. Aquiſgranenſ. pa.* 30. *Tom.* 2. *Concil. Galliæ.*

(*g*) *Tit. Hon. par.* 1. *c.* 7.

(*h*) Θεοστεφὴς ἐν χειστῷ τῷ Θεῷ πιστὸς βασιλεὺς, ἐν Θεῷ Βασιλεὺς τῶν Ῥωμαίων.

With us in *England*, *Ine* King of the Weſt *Saxons*, that lived many years before *Charles* the Great, uſeth it, *IC INE MIDGODES GIFT WEST SEAXNA CYNING*: I *Ine* by the Grace of God, King of the *Weſt Saxons*, in his preamble to his Laws: But until about our *Henry* the Third, it was not of ſo conſtant uſe, as that the Stile of the King neceſſarily required it.

Vide Eginhard. Annal. Franciæ, Anno 801. *Anon. vita Car. M.*

This Stile of *Dei Gratia* is frequently given in old time, and yet in uſe, to Spiritual Lords, nothing being more common in the Inſtruments of Biſhops and Abbats, in the Chartularies of Monaſteries; and it is given from Kings to them in the Summons of Parliament, and Writs to Aſſemble or Prorogue Convocations in this form, *Jacobus*, &c. *Reverendiſſimo in Chriſto Patri, prædilectoq; & fideli Conſiliario noſtro, Georgio eadem Gratia Archiepiſcopo Cantuarienſi*, &c. But at this day, though it be given to them, they uſe it not in the firſt Perſon, but *Dei* (*i*) *Clementia*, or *Providentia Divina*; and in older times, when they writ to the Pope, Emperor or King, they were not to write *Dei Gratia* of themſelves, but only ſuch or ſuch, *licet indignus*, *vel immerens*, *Bononiæ Epiſcopus*, &c.

Given to Spiritual Lords.

(*i*) *Poſula Novella, MS. cap.* 111.

By all theſe Titles we cannot but obſerve, that the dignity of Kings and Sovereigns, was looked upon in all Ages, as deriving Authority from God Almighty, and his Vicegerents here upon Earth; having the Attributes of God, that as he was Supreme over all things in Heaven and Earth, ſo they within their Diſtricts upon Earth.

I ſhall end this Chapter with this Obſervation, That the Attribute of *Dei Gratia* applied to Sovereigns and Biſhops, might probably have Authority from the Conſtitution of *Juſtinian*, (*k*) which runs thus. The greateſt Gifts which Gods goodneſs from above, hath conferred on Men, are the Prieſthood and Empire, both of which proceed from one and the ſame Principle, and are for the ordering and diſpoſing of the Affairs of Mankind.

(*k*) Μέγιστα ἐν ἀνθρώποις δῶρα δέδωκε Θεοῦ φιλανθρωπία ἐκ τῶν ἄνωθεν δεδομένα φιλανθρωπίας ἱερωσύνη τε καὶ βασιλεία, &c. *Juſt. Nov.* 6. *init.*

Ἐκ μιᾶς τε καὶ τῆς αὐτῆς ἀρχῆς ἑκατέρα περίεστι καὶ τὸ ἀνθρώπινον καλλιεργοῦσα βίον. *Ibid.*

Concerning the peculiar Title of our Kings of *England*, Defender of the Faith, the learned *Spelman* having given us the Copy of the Bull, and diſcourſed ſo fully of it, I ſhall remit the curious Reader to him for ſatisfaction

I. Rudd CHAP.

CHAP. XVII.

Of the Soveraignty of the Kings of England, *according to our Hiſtories and Laws.*

The Kings of *England* have uſed all the Titles proper to Soveraign Princes.

THE Titles and Attributes which other Soveraign Princes have either aſſumed, or have been given to them, our Kings of *England* have uſed, as might be made appear by innumerable Examples: But I ſhall treat but of a few, and ſhew wherein the Soveraignty is diſcovered, and what ancient Prerogatives they have by their acts of Grace quitted; and laſtly, how the long Parliament of 1641. would have cramped the King's Authority.

As King, Emperour, Lord.

Firſt as to the Title of King or Emperor promiſcuouſly. So our *Edgar* frequently in his Charters, calls himſelf *Albionis & Anglorum Baſileus*; and I have noted before that the *Grecians* eſteemed the word Βασιλεὺς to be of full as eminent Signification as Emperor. So in a Charter (*a*) to *Oſwald*, Biſhop of *Worceſter*, he is called *Anglorum Baſileus, omniumque Regum, Inſularum, Oceanique Britanniam circumjacentis, cunctarumque Nationum quæ infra eam includuntur, Imperator & Dominus.* In which we may note that one of our Kings of *England* writ himſelf not only *Baſileus*, according to the *Grecian* uſage, which ſignified King and Emperor; but alſo Emperor and Lord, three of the fulleſt Attributes, either the *Grecian*, or *Roman* Emperors ever uſed; as alſo Lord of the *Britiſh* Sea, as *Canutus* his Succeſſor challenged. So in a Charter to (*b*) *Peterburg*, *Ego Edgar ſub ipſo ſidereo Rege præſidens Regno Magnæ Britanniæ.*

(*a*) *Cod. Wigorn.*

(*b*) *Mon. Ang. par.* 1. *p.* 64.

I have ſeen another (*c*) of his Charters prefaced thus, *Gratia Domini noſtri Jeſu Chriſti omnium ſeculorum omnia ſuo Intuitu diſtribuentis Regna terrarum, & moderantis habenas rerum. Ego Edgar ſub ipſo eodem Rege præſidens Regno Britanniæ*, &c.

(*c*) *Lib. MS. Roberti de Swapham, &c. Fundationis Burgenſis Cœnobii p.* 38.

So King (*d*) *Edward* in the ſame Book ſtiles himſelf, *Ego Edwardus Rex Anglorum Monarchiam Regiminis tenens, hoc decretum Patris mei per deprecationem Abbatis Aidulfi, perhenniter affirmavi.* In which we may note, that *Edgar* owns himſelf ſubject to Jeſus Chriſt, God. And King *Edward* ſaith, he holds the ſingle Command of Government. So King *Edward* in a (*e*) Charter to *Ramſey*, ſtiles himſelf *Totius Albionis, Dei moderante Dominatione, Baſileus*, King of all *Albion*: and King *Edwin* in a Charter to *Crowland*, calls himſelf King of *England*, and Governour and Ruler of all the Land of *Britain.* So *Ethelred* in his Charter to *Canterbury*, ſtiles himſelf Of all the *Engliſh* born, and the *Orcades* lying in Circuit about it, Monarch, and Emperor of the *Engliſh*. So that by *Orcades* muſt be underſtood all the Iſles about *Britain.*

(*d*) *Id. p.* 39.

(*e*) *Coke Præfat.* 4. *Reports. Rex Anglorum & totius Britanniæ Telluris Gubernator & Rector. Angligenum Orcadarum, necnon in Gyro jacentium Monarcha, & Anglorum Indupera-tor.*

So *William Rufus* dates his Charter to the Monaſtery of *Shaftſbury, ſecundo Anno Imperii mei.* By all which it appears that the

Kings

Kings of *England* have juſtly aſſumed the Supream Imperial Command in their own Dominions: and though the Title of Emperor hath been diſuſed, yet we ſhall find the ſubſtance of it ſufficiently challenged in that of (*f*) *William Rufus* to Arch-Biſhop *Anſelm*, when he told him, That he had all the Liberties in his Kingdom, which the Emperor challenged in the Empire. And in a Conſtitution (*g*) of King *Edward* the Second, it is declared, That the Kingdom of *England* is moſt free from all Imperial Subjection; which excluded all public Notaries, who were made by the Emperor or Popes, and by this Conſtitution were utterly rejected.

Kings of *England* as much Sovereigns as Emperours.

(*f*) *Ipſe omnes libertates in Regno habebat ſuo, quas Imperator vendicabat in Imperio.* Matt. Paris in vita Willielmi 2.

(*g*) *Regnum Angliæ ab omni ſubjectione Imperiali liberrimum.* Clauſ. 13 E. 2. m. 6. dorſo.

This further appears in the (*h*) Statute of *Præmunire* made 23 *Ed.* 3. which runs thus, That it being ſhown by the grievous and clamorous Complaints of the great Men and Commons, how that divers of the People be, and have been drawn out of the Realm to anſwer of things whereof the Cognizance pertaineth to the King's Court; and alſo that the Judgments given in the ſame Court be impeached in another Court in prejudice and diſ-inheriſon of our Lord the King, and of his Crown, *&c.* Therefore it was enacted, That none of the King's Liege-People, of what condition ſoever, ſhall draw any out of the Realm in Plea, whereof the Cognizance appertaineth to the King's Court, or of things whereof Judgments be given in the King's Court, *&c.*

The Statutes for it.

(*h*) *Stat. Anno* 23 *E.* 3. *c.* 1. *Vide Coke Inſtit.* 2. 111. 4 *part.* 6. 8. 3. *Inſtit.* 120, 125.

This Statute as well as that of Proviſors 25 *Ed.* 3. was made to hinder the Subjects Appeals to *Rome*, or to any other Court in ſuch things whereby the King's Soveraignty might be diminiſhed, and this Statute relates to one made by King *Edward* the Firſt. Alſo in the Statute of Proviſors, 25 *Ed.* 3. reference is made to the (*i*) Statute made at *Carliſle*, by King *Edward* the Firſt.

(*i*) *Anno* 35 *Regni.*

The Statute of (*k*) *Præmunire* for purchaſing Bulls from *Rome*, gives an account of the preceding Statutes, and further ſaith, Whereas our Lord the King, and all his Liege-People ought of right, and of long time were wont to ſue in the King's Court, to receive their Preſentments to Churches, Prebends, and other Benefices of Holy Church, which they had right to preſent to, the Coniſance of Plea, of which Preſentment belongeth unto the King's Court, of the old right of his Crown uſed and approved, *&c.* then particularly enumerates the Encroachments of the Biſhop of *Rome*, by Proceſſes, Excommunications of Biſhops, for executing Judgments given in the King's Courts, and the tranſlating of Prelates out of the Realm, or from one ſpiritual Living to another, againſt the King's Laws and Regality, *&c.* The Statute expreſly declares, That the Crown of *England* hath ever been ſo free, that it is in no Earthly Subjection, but immediately ſubject to God in all things, touching the Regality of the Crown, and to no other.

(*k*) 16 *R.* 2. *c.* 5.

Under King *Henry* the Eighth, (*l*) the whole Parliament ſay, that by ſundry old and authentick Hiſtories and Chronicles it

(*l*) 24 *H.* 8. *c.* 12.

is manifeſty declared and expreſſed, that this Realm of *England* is an Empire, and ſo hath been accepted in the World, governed by one Supream Head, and King, having the Dignity and Royal Eſtate of the Imperial Crown of the ſame; unto whom a Body Politick, compact of all ſorts and degrees of People, divided in Terms by names of Spirituality, and Temporalty have bounden and owen to bear, next to God, a natural and humble Obedience.

(m) 25 *H.* 8. *c.* 21. The next (*m*) Year in another Statute, it is ſtiled the Imperial Crown and Royal Authority, recognizing no Superior, but only Your Grace: and in the Chapter following, the Kings of *England* are ſtiled Kings and Emperors of this Realm: and (*n*) 28 *H.* 8. *c.* 7. in (*n*) another of the ſame King, it is called, The moſt Royal Eſtate of the Imperial Crown of this Realm. So in the ſame (*o*) *Stat. Hibern.* 28 *H.* 8. *c.* 2. (*o*) Year (before the Title of Lord of *Ireland* was altered into King) the Stile is Kings and Emperors of the Realm of *England*, and of the Land of *Ireland*; and in ſeveral other Statutes it is called the Imperial Crown.

I have inſerted theſe to clear that by our Laws the Kings of *England* are under no Subjectjon to any foreign Prince or Potentate whatſoever. (p) *Tit. Hon. p.* 21, 22. And Mr. (*p*) *Selden* ſaith, that the Supremacy is not only uſed by the *Engliſh* Sovereigns, but hath been challenged by the Kings of *Spain*, *Denmark*, *Poland*, the *Czars* of *Muſcovy* and other free Princes; over all within their own Dominions, excluſive of all foreign Powers: and upon the like ground of Supremacy was that Law made by King *James* the Third of *Scotland*, in theſe words, ----Our Sovereign Lord has full Juriſdiction, and free Empire within this Realm, *&c.*

A Confirmation of this Supremacy of our Kings appears in what is reported of our King *Edward* the Third, That when *Lewis* (*q*) of *Bavier* the Emperor, had an Interview with him, the Emperor ſtomached that the King of *England* ſubmitted not himſelf to kiſs his Feet. But the King anſwered, That he was (*r*) an anointed King, and had Life and Member in his Power, therefore he ought not to ſubmit himſelf to him as other Kings.

(q) *Quod Rex Angliæ non ſe ſubmiſit ad oſcula pedum ſuorum.*

(r) *Rex inunctus & habet vitam & membrum in poteſtate ſua, & idcirco non debet ſe ſubmittere tantum ſicut Rex alius.*

Whence it was that *Alfonſo* the ninth King of *Caſtile* defining what Kings were, (after he had diſpatched the Particulars that belonged to the Emperor) ſays, That they are every one in their Kingdoms, the Vicars or Vicegerents of God, placed over the People to govern them, (*s*) no otherwiſe than as the Emperor is in his Empire. Whoever deſires further Satisfaction in this Point, may have recourſe to the voluminous Collections of Mr. *Pryn*, and other Authors that have treated of the Kings Supremacy.

(s) *Bien aſſi come el Emperador en ſu Imperio.* Partid. 2. tit. 1. Ley 5. & 8.

Moſt of what I have hitherto diſcourſed, relates to the King's Supremacy, *ab extra*, that he hath no foreign Superior, that ought to impoſe any thing upon him or his Subjects, contrary to his Pleaſure and his Laws in his Dominions.

Wherein the King's Sovereignty consists according to our Laws.

I shall now give a short Abridgement of what I find our learned Lawyers have writ concerning the King's Authority and Sovereignty, in his Kingdom of *England*, and how, in former Ages, Kings have quitted some of their Royal Prerogatives. In our Laws the King is stiled in Ecclesiastical matters, the Supreme Ordinary; (t) in Civil matters, *caput Reipublicæ*, *Pater Patriæ*, *totius Regni Pater-Familias*, Chief Justice, *&c.* being furnished with plenary Power, to render Justice and Right to every Member and part of the whole Body, (u) without the help of Foreign Jurisdiction. Some Attributes of God in a similitudinary way (say (w) the great Lawyers) are ascribed to him for the Excellency of his Person, and the greatness of his Office, as Sovereignty and Power, Omnipresence, Majesty, Immortality, *&c.* In his Political (x) Capacity, not subject to the Infirmities of others, as Nonage, Death, Attainder, *&c.* So no Laches, Negligences, Defects, or Stops of Blood, can be imputed to, or fastned upon him, as is well known in the case of King *Henry* the Seventh, (y) wherein it was unanimously resolved by the Judges, That his Natural Capacity doth so far participate with the Politic (which is superadded to the Body natural of the King) that these become consolidate, consubstantiate and indivisible in one and the same Royal Person, and the Body Politic (which is the more worthy, and of a sublimer Nature) is in no ways obnoxious to the Humane Imbecillity of Death, Infamy, Crime, or the like, but doth draw from the Natural Body, all Imperfections and Incapacities whatsoever.

(t) *Coke* 11. 86. *Calvin's* Case, 215.

(u) *Coke* 2 *part.* 1, 2. 24 *H.* 8. *c.* 1. 24 *Eliz. c.* 1.

(w) *Finch.* 81. *Plowden* 177, 238, 242. *Bagshaw's* Right of the Crown.

(x) *Sheppard's* Grand Abridgment, *part.* 3. *p.* 44.

(y) *St. Albans vita Hen.* 7. *p.* 29.

So that there is, by the Law, said to be in the King, (z) a threefold greatness of Perfection; *First* of being freed from Infamy and all kind of Imperfections common to Man: *Secondly*, of Power, in having the command of all his People: *Thirdly*, of Majesty, being the Fountain of Honour, Justice, and Mercy.

(z) *Sheppard ut supra.*

The King is Gods immediate Viceroy (a) within his Dominions *Vicarius Dei*: As his Protection and Government reacheth to all his People as Subjects; so the Allegiance and Obedience of them all, is due to him as their Sovereign, whether Ecclesiastical or Civil, and so he is *Persona mixta*; his Prerogatives are called *Jura Regalia*, *Insignia Coronæ*, Ancient Prerogatives and Royal Flowers of the Crown, so inseparably annexed to the Crown, that none but the King may have them, nor can they be communicated to, or taken by any Subject.

(a) *Coke* 2. 44. 5. 29.

(b) All Lands are said to be held of him immediately or mediately, he can hold of no Man, or any be equal to him, as to be joynt Tenant of Land with him, and his Jurisdiction is over all places within his Dominions, both on the dry Land and on the Sea. The Judges are to observe it as a certain Rule, That whatever may be for the benefit of the King, and his profit, shall be taken most largely for him; and what against him, and for his disprofit, be taken strictly: neither is it only the duty

(b) *Bracton lib.* 1. *c.* 8. *Stat.* 25 *H.* 8. *c.* 21. *Nemo terram nisi Authoritate Regia possidet.* *Plowden* 136. *Jenkins Cent.* 7. *Case* 77. & 2. *Case* 16. 17 *E.* 2. *c.* 17. *Nevil* 101. 174.

ty of Judges, but of all other his Subjects in their Stations, to help the King to his Right.

The Perogatives are many and great, yet ſuch as are his by the Ancient Law of the Land, and what the Kings of *England* have, time out of mind, uſed, and are ſuch as are of abſolute (c) neceſſity, for the ſecurity of the Government, and the Public weals: As to call and diſſolve Parliaments, give his Royal Aſſent to Laws, command the *Militia*, coyn Moneys, grant Honors, make and diſpoſe of the great Seal, diſpenſe with penal Laws, pardon Felonies and Treaſons, make and appoint great Officers, Juſtices of Eyre and Aſſize, of the Peace, Gaol-delivery, and Sheriffs, to grant Charters to Corporations and other Perſons, or Fraternities: He hath the ſole Power of appointing, ratifying and conſummating all Treaties with Foreign Princes, making War and Peace, granting Safe-Conduct and Protection; and all theſe and many other, are firmly aſcertained (d) by Laws, and have ever been, and ſtill are, in the King alone, and at his own Diſcretion.

(c) *Coke* 12. 8. 30. 2. *part. Inſtit.* 262. 496. 5. *part.* 11.2.8.

(d) *Quod Rex eſt Legi, Lex eſt Regi; Rex eſt Anima Legi, & Lex eſt Anima Regi.*

Although there is no need in deſcribing the Sovereignty of our Kings, to carry it up to that abſoluteneſs of Monarchy, where all things are appointed and reverſed by the Sovereigns *fiat*: yet (e) we muſt on the other ſide conſider, That the Monarchy, which is ſubject to the impetuous Caprices of the Multitude, when giddy, or to the incorrigible Factiouſneſs of the Nobility, when intereſted, is, in effect, no Government at all; it muſt be owned, That in all Governments a Sovereignty muſt reſide ſome where, and a Monarch can have no Participants. For then it would ceaſe to be a Monarchy, and in things that relate immediately to Government, the King hath as much right to regulate them (as to inſtance, to reſtrain the Licence of the Preſs or ſecure Peace) as we have to regulate and diſpoſe of our Property; Government being the Kings Property: for with the Monarchy, the King muſt enjoy all things that are neceſſary for the Adminiſtration of it, according to that juſt Maxim (f) of the Law, When any thing is granted, all things ſeem to be granted, without which the thing granted cannot be explained: Which warrants the Kings Advocate of *Scotland*, to lay that down as a general (g) Rule, That their Kings can do every thing that relates to Government, and is neceſſary for the Adminiſtration thereof, though there be no ſpecial Law or Act of Parliament for it, if the ſame be not contrary to the Law of God, Nature or Nations.

(e) *Jus Regium*, p. 42.

(f) *Quando aliquid conceditur, omnia conceſſa videntur ſine quibus conceſſum explicari nequit.*

(g) *Jus Regium*, p. 77.

The Power and Authority of the Kings of *England*, have been much more unbounded than they are at preſent. (h) *Bracton* ſpeaking of his time, ſaith, That neither the Juſtices or private Perſons might diſpute the Kings Charter; but if there were a doubt of it, the Reſolution muſt come from the Kings own Interpretation. If Juſtice be demanded of the King (ſaith he) (i) ſeeing no Writ lies againſt him, one muſt petition that he would correct and amend what he hath done.

(h) *Part* 1. *c.* 16. *fol.* 34.

(i) *Idem, lib.* 1. *c.* 8. *p.* 5.

By

By the Condeſcenſions of gracious Princes, ſuch Reſtrictions have been made of their Sovereign Abſoluteneſs, that they have obliged themſelves to govern their Kingdoms (tranſmitted to them with ſuch Limitations, by their numerous Anceſtors) by Rules of Law, Equity, Juſtice, and right Judgment, in Imitation of their Supreme Head and Omnipotent Monarch.

By the Grants and Condeſcenſions of our Kings, their Abſoluteneſs leſſened.

That therefore it may demonſtratively appear how happily the Government of *England* is conſtituted for the Benefit of the Subjects (who under ſo benign a Monarchy, enjoy more Advantages in the Security of their Perſons and Proprieties, than under the moſt free Commonwealth that ever we read of) I ſhall lightly touch upon ſome of thoſe Particulars, which the Kings of *England* (by reaſon of ſeveral Acts of Parliament, they have given their Royal Aſſents to) have precluded themſelves from the ſingle Diſpoſal of, as in Abſolute Monarchies are uſed; yet I hope to make it clear in ſeveral Branches of this Diſcourſe, That there is no ſuch thing as Co-ordinacy of any other Power, or ſuch a mixture as vitiates the Monarchy by a debaſing Alloy; much leſs that the Government can be Arbitrary or Tyrannical; which hath ſheathed the Sword of Juſtice within the Velvet Scabbard of the Laws, and lined the Scarlet Robes of Majeſty with the ſofteſt Ermine of Indulgence to well deſerving Subjects, who by their Obedience and Conſiderateneſs, make their Princes and their own Happineſs moſt perfect. For it is equally unhappy to Princes and Subjects, where (*k*) *Maximilian*'s Jeſt is true, That whereas other Princes were Kings of Men, he was King of Kings, becauſe his Subjects would do but only what they liſt.

(*k*) *Alii Principes Reges hominum, ipſe Rex Regum.*

But to come to the Particulars of Royal Abatements and Indulgences. The Kings of *England* may not rule their People by their Will, or by Proclamation, as the *Roman* Emperors by their (*l*) Edicts; or make new Laws, or change any of the old ſtanding Laws, without the mutual Conſent of the two Houſes of Parliament: He may not oppreſs the People, or in any Arbitrary way, take from them their Liberties or Eſtates, under any pretence whatſoever, without due courſe of Law. Nor can he impoſe upon their (*m*) Perſons, what Charges or Burthens he pleaſeth, but according to, and by the Laws of the Kingdom. He cannot do any thing againſt the Law of the Nation, or againſt common Right; cannot change Ancient Cuſtoms: for a Legal (*n*) Cuſtom is more available than a Royal Conceſſion; yet on the other ſide, that Cuſtom which advanceth againſt the Prerogative of the King, is void.

(*l*) *Bracton, lib.*2.*c.*8. The Particulars of Royal Abatements.

(*m*) *Stamford*'s Pleas of the Crown.

(*n*) *Hughs*'s *Reports*, 254,263. *Conſuetudo legalis plus habet quam conceſſio Regalis.*

He cannot impoſe Arbitrary (*o*) payments, erect new Offices of Charge to the Subject; may not deny or delay Juſtice, may not compel his People to make Gifts, Loan, Benevolence, or Tax, without conſent of the two Houſes.

(*o*) Petit. of Right, 3 *Car.* 1. 7 *Car.* 1. *c.* 17.

The King (*p*) may not impriſon without juſt Cauſe, nor keep any Mans Cauſe from Tryal; may not ſend any man out of

(*p*) 2 *Car.* 1. *c.* 1. *Coke* 12. 16. 2 *part. Brown lib.* 2. *c.* 2. *Coke Inſtit.* 2 *part.* 47, 48. Petition of Right. *Dyer* 176.

of the Realm without his own Consent; may not, in time of Peace, Billet or Quarter Soldiers or Mariners upon his People, against their Wills; may not grant Commission to try Men by Martial Law in time of Peace, nor to determine any matters of difference betwixt Subjects, other ways than by ordinary (q) course of Law and ordinary Courts; may not, by Patent or Licence, make a grant of a Monopoly, or the benefit of a Penal Law, or give a Power to dispense with Penal Laws in some Cases.

(q) 21 *Jac.* c. 31. *Coke* 11. 87. *Plowden* 497.

(r) He may not have, or take, that he hath right to, which is in the Possession of another, but by due course of Laws; and may not make new, or alter old Courts of Justice, unless to be kept after the Course of the Law, and not in Course of Equity; Nor (s) alter the Courts of *Westminster*, that have been time out of mind, nor erect new Courts of Chancery, Kings-Bench, Common-pleas, or Exchequer.

(r) *Coke* 11. 87.

(s) *Sheppard*'s Grand Abridgment, *part* 3. *fol.* 49.

(t) He may not by his last Will and Testament, under the great Seal, or otherwise, dispose of the Government, or of the Crown it self; nor give and grant away the Crown-Lands or Jewels, which he hath in his Politic Capacity, nor give away any of the incommunicable Prerogatives.

(t) *Fleetwood, lib.* 1. c. 8.

No Power co-ordinate with the King's.

By these Abatements of Power and gracious Condescentions of the Kings of *England*, for the Benefit and Security of the Subject; we are not to conclude, that there either is, or can be any Co-ordination or Coæquality of any State, Order or Degree of the Subjects with the Sovereign, nor any Competition of the Subjects Power (in his Concurrence) with the Vertual and Primary Influence of the Sovereign; but a plain Subordination and subjected Ministration of the one, under the Sovereignty of the other. For although there is a Co-operation of the Members with the Head, for the performing some Acts of State, and they may seem Orders or States coæqually Authorized in the Power of Acting with the Sovereign, in Petitioning for, advising, or consulting about, or consenting upon the Kings Summons to Laws. And although in judging and determining matters of Private Interest, the King hath not an Arbitrary Judgment, but is restrained to the Judgment, to be administred by the proper sworn Judges in his Courts, whom he appoints to judge according to his Laws; and in the making of Laws, his Power and Judgment is restrained to the Concurrence of the Nobles, and Commons in Parliament: yet in all other things (wherein he is not expresly restricted by any Law of his own or Progenitors granting) he retaineth the absolute Power, as in the particulars before mentioned, and in the Chapters of Parliaments I shall further discourse.

(u) Observations on His Majesty's Messages, &c.

The Rebels in 1641. would have lessened the King's Sovereignty, and placed it in the People, or their Representatives.

In the Rebellion under King *Charles* the *First*, the (u) Pencombatants for the Party (knowing they had the whole Current of the Laws against them) made a great noise and bustle with Sophisms, and plausible specious Pretences, to captivate the Populace; and nothing was more frequent than the Misap-

plication

plication of that of the Philoſopher, That the King was *Singulis major*, but *Univerſis minor*: Inferring from thence, That the Collective Body of the People, and their Repreſentatives, were Greater in Authority than the King.

In anſwer to which, it may be obſerved, That the Aphoriſm, how true ſoever in any other ſenſe, is moſt falſe, in any ſenſe, of Sovereignty. For, if it be meant, That the King is a better Man only than any of us ſingle, this doth not tell us he is better than Two; and this is no more than poſſibly he might be before he was King: For we muſt needs look upon Princes, as Perſons of Worth, Honour, and Eminency, when taken from the People; which the ſuperaddition of Royalty did not deſtroy. Beſides, any Lord of the Land may challenge ſuch a Supremacy over all the Knights, and any Knight over all the Eſquires. Furthermore, if Princes be Sovereigns to ſingle Perſons of Subjects only, and not to the univerſality of them, then every ſingle Subject by himſelf is a Body Politick, whereof the King, as King, is Head; and ſo the Publick Community is out of the King's Protection, he being no King as to them in a complex Body. Such impudent Falſities, and many more deſtructive Conſequences, flow from ſuch abſurd Principles: And if the Maxim were true, the People have placed a King not over, but under themſelves.

But they enforce the Argument ſtill further, That the Fountain and efficient Cauſe of Power is the People; and from hence, they ſay, the Inference is juſt, That he is leſs than the Univerſe. But the (*w*) Conſequence is rather the contrary: For, ſuppoſe the People were the efficient Cauſe of Power, it can be no otherwiſe than by tranſlating, or deriving their divided Power, and uniting it in him. Since then they cannot retain what they have parted with, nor have what they gave away, it follows, That he who hath all their Power, and his own particular beſides, muſt needs be greater, and more powerful than they; it being a very great Truth, That he is the only Fountain of Power and Juſtice.

(*w*) Anſwer to Obſervations, *p.* 10.

Another of their Maxims was, That *quicquid efficit tale, illud eſt magis tale*: And they aſſume, But the King was made by the People, therefore leſs than the People. In anſwer to which, it is apparent, the Argument is Sophiſtical, as being built on a Maxim in it ſelf amphibolous, which is not ſimply true, but as it is reſtricted: For it is true before the Effect produced, not after. So a Spark firing a City, was once more Fire than the Houſes; but not ſo after the whole Town is become a Flame. It is true alſo in thoſe Agents in whom the Quality by which they operate is inherent; not true in thoſe who by ways of Donation diveſt themſelves of Power or Wealth. For a thing cannot retain its Fulneſs, after it hath emptied it ſelf. If the Objector have an Eſtate, which he would willingly improve, let him beſtow it on another, and he ſhall make him rich, and, by his own Argument, himſelf richer: It is to be ſuppoſed, ra-

ther than ſuch an one will part with his Eſtate, he will find an Anſwer to his Objection.

As to the *minor* Propoſition, I have before cleared, I hope, That the People are not the Original Cauſe of Government, But the Obſerver ſaith, They are the Final Cauſe; and the End is far more valuable in Nature and Policy, than that which is the Means: therefore the Commons, whoſe Good is the final End of all Government, are more Honourable than the Sovereign. But the Rule holds in ſuch Means only as are valuable by that relation they bear to their Ends, and have no proper Goodneſs of their own. A King is not ſo to his People. If we look back to his firſt Extraction, when he was firſt taken from the People to be ſet over them, we muſt needs behold him as a Man of ſome Worth, Honour, and Eminence; which the ſuperaddition of Royalty did not deſtroy, but encreaſe; and to be a means of his Peoples Preſervation, is very conſiſtent with the Heighth of Honour. Beſides, they that would captivate the unthinking Multitude by ſuch Fallacies, muſt conſider, that the Queſtion is not, Who is Preferable, but, Who is Superiour. One good Chriſtian is preferable to a thouſand that are not ſo; yet his Intereſt in the Commonwealth may not be preferable. A Shepherd is ordained for his Flock; yet a Flock of Brutes is not preferable to any Reaſonable Creature. Further, the King's Intereſt and the Peoples are inſeparable in the Conſtruction of the Law, which preſumes, what the King doth, he does for the People. Whether therefore the King's Power be derived from God, or the People, it is preferable. If from God, becauſe his Ordinance: If from the People, becauſe the People have elected him, and conſented it (*x*) ſhould be, and have truſted him with the Publick Intereſt, which is ſtill preferable.

(*x*) *Jus Regium*, p. 68.

If this way of arguing were ſound, Angels being Miniſtring Spirits for the good of Men, it would follow, That Men ſhould be more Honourable than Angels; and the poor Client ſhould be a better Man than his Learned Counſellor; and the ſimple Patient, than his Doctor.

As to *Bracton's* Authority, *Rex habet ſuperiorem Deum, legem item Curiam ſuam*, I muſt refer the ſcrupulous Reader to the Book called *The Caſe of our Affairs*, p. 14.

CHAP.

CHAP. XVIII.

That the Sovereign is unaccountable to any but God.

BEfore I come to treat of the ſeveral Branches of the Sovereignty of Kings in the Executive parts of them, I ſhall from the general Idea of their Sovereignty deduce three Corollaries, in this and the two following Chapters, which ſeem to me to flow naturally from the Being of a Sovereign, *viz.* That ſuch are accountable to none but the Great Sovereign of the Univerſe: And ſecondly, may diſpenſe in ſome Caſes with the Laws: And laſtly, muſt not be reſiſted or rebelled againſt.

The neceſſary Motive to treat of the Unaccountableneſs of Kings, the Murther of King *Charles* the Firſt.

If there were no other Motive to induce me to treat of this Head, the barbarous Murther of the Bleſſed Martyr King *Charles* the Firſt, would have the ſame power as the ſenſe that *Cræſus*'s dumb Son had to ſee his Father's Life in imminent danger, which made ſuch a violent emotion of the Spirits, as unlooſned the ſtiff Ligaments by which his Tongue was contracted, or forced an Irruption of powerful Spirits to invigorate the paralytick Muſcles of it, ſo that he cried out, *Spare my Father.* So certainly the Conſideration of ſuch an High Court of Juſtice, that arraigned and ſentenced their Sovereign, ſhould raiſe an Indignation in any one that hath ſenſe of Allegiance, Duty, or Religion, to defend that as a Fundamental Truth, That Sovereigns are ſubject to no Tribunal but that of their Heavenly Sovereign.

In the handling this, I ſhall pick out ſome of the Aſſertions of Learned and Judicious Authors, Heathens and Chriſtians, and annex and interſperſe ſuch Reaſons as may evince it; and then ſhow, That this doth not leave Princes to a Tyrannical Liberty; and laſtly, give ſome ſhort Remarks upon the unparallell'd Sentence of the Regicides of King *Charles* the Firſt of Immortal Memory.

(a) *Rabba bar Nachman*, in his great Gloſs upon *Deuteronomy*, ſaith poſitively, No Creature may judge the King, but the Holy and Bleſſed God alone: For the Original *Hebrew* of which, and the place of *Moſes* from whence he deduceth this Aſſertion, I muſt refer the Reader to the Authors cited, having choſen this not only for the fulneſs of the Expreſſion, but for the Antiquity, though not of the Comment, yet of the Text, before any other.

(a) *Uſher*'s Power of Princes, *part* 4. *pag.* 196. *Edit. Cracovian.* Divine and Humane Authorities to prove it.

All thoſe Places alſo in Holy Scripture which ſtyle Princes and Judges of the Earth (*b*) Gods, and the Sons of God, and *Pſal.* 82. 6. *I have ſaid ye are Gods, and all ſons of the moſt High*; which in the *Chaldee* Paraphraſe is thus rendred, *Behold, ye are reputed as Angels, and all of you as it were Angels of the moſt High*; are ſufficient Proofs of this Truth: As are likewiſe thoſe Places that tell us, It is the Will of God that we (*d*) ſubmit our ſelves

(*b*) *Pſal.* 8. 5. with *Heb.* 2. 7. and *Pſal.* 97. 7. with *Heb.* 1. 6. *Exod.* 21. 6. & 22. 8. (*c*) *Job* 1. 6. & 2. 1. & 38. 7.

(*d*) 1 *Pet.* 2. 13, 15.

to theſe Higher Powers, for his ſake. Therefore (e) St. *Chryſoſtom* calls Regality ſuch a Government as is not ſubject to the control of any. *Sophocles* calls it (f) Ἀυταρχία, a Free and Independent Regiment; and (g) *Marcus Aurelius* in *Dio*, an Abſolute Kingdom, not ſubject to the Control of any. To all which, agrees that of *Horace*, *Lib.* 3. *Carm. Od.* 1.

(e) Βασιλεία δὲ ἀνυπεύθυνος ἀρχή. *Orat.* 3. *de Regno.*
(f) *In Antiq. v.* 1127.
(g) *Xiphilin.* Αὐτοκράτης Βασιλεία καὶ ἀνυπεύθυνος.

Regum timendorum, in proprios Greges,
Reges in ipſos Imperium eſt Jovis.

By which he fully expreſſeth, That as Kings have Power over their Subjects, ſo God hath the Power over Kings.

All the vaſt Collections that may be made, of Emperours aſſerting, or Subjects owning, that their Authorities are from God, that God gave them their Kingdoms, they were Crowned of God, *&c.* of which there is a copious Collection in Archbiſhop (h) *Uſher*; are ſo many Arguments to prove this Aſſertion, That as they derive their Authority from God, ſo they ſhould only be accountable to him.

(b) Power of Princes, *a pag.* 47 *ad pag.* 65.

But I ſhall now proceed to more poſitive Authorities. *Marcus* (i) *Aurelius* ſaith, Of a Free Monarch none may judge but God alone; and (k) *Dion Caſſius* tells us, That Kings are looſened from the Laws, that is, they are freed from all coactive Obedience to them, and are held by none of the written Ordinances. So (l) *Pliny* tells us, That the happieſt thing in a Princedom is, that the Prince may be conſtrained to nothing. Therefore the moſt Judicious (m) Primate ſaith, In regard of themſelves, Kings are ſaid to be exempted from Subjection to the Laws, becauſe they are not tied (otherwiſe than for Convenience, and good Example ſake) to the obſervation of ſuch as are more poſitive and temporary Laws; and becauſe they are not liable to the Civil Puniſhment ſet down for the breach of any Law, as having no Superiour upon Earth, that may exerciſe ſuch Power over them. For, as in another (n) place he ſaith, If the People may call him to an account for the Breach of the Law, the State is plainly Democratical; if the Peers, it is Ariſtocratical; and if either, or both, it cannot be accounted Monarchical.

(i) *Xiphilin. excerpt. ex Dionyſ. M. Aurelio.* Περὶ τῆς ἀυταρχίας ὁ Θεὸς μόνος κρίνειν δύνασαι.
(k) Λέλυται γὰρ νόμων, τοῦτεστιν, ἀπὸ πάσης ἀναγκαίας νομίσεως εἰσι, καὶ ὑπὸ τῶν γεγραμμένων ἐνέχονται. *Dion. Hiſt. Rom. l.* 53.
(l) *Ereptumque Principi illud in Principatu beatiſſimum, quod nihil cogitur.* Panæg.
(m) *Uſher's* Power of Princes, *p.* 73.
(n) *Idem, p.* 96.

To which we may add that of the Judicious Lord (o) Chancellor, That though a Prince's violating his Faith is againſt the Law of Nature, yet the Obligation doth not ſet any Judge over the Sovereign, nor doth any Civil Law pretend there is any Power to puniſh him. It is enough that in Juſtice he ought to do it, and that there is a Sovereign in Heaven above him, though not on Earth.

(o) *Clarendon's* Survey, *c.* 29. *p.* 163.

So (p) *Cyril* of *Alexandria* ſaith, Who dare violate the Decrees of the Kings of the Earth, unleſs he himſelf be one that is inveſted with Regal Dignity, (and I may add, his Superiour:) For in ſuch the Charge of tranſgreſſing the Law hath no place at all.

(p) *Comment. in* 12. *Johannis.*

So

So (q) *Cassiodorus* saith, If any of the People transgress, he sinneth against God and the King; but when the King offendeth, he standeth guilty to God alone, because he hath no Man to be Judge of his Doings. So *Nicephorus*, *Catena*, *Lyra*, *Didymus*, *Arnobius Junior*, and all the Commentators on the fifth Verse of the 51. *Psalm*, on those Words, *Against thee only have I offended*, concur in the same Assertion, That Kings are subordinate to none but God. Nor do any oppose it, but such as would place a *Mufti* or *Sanhedrim* above Kings.

(q) *Quando Rex delinquit, soli Deo reus est, quia hominem non habet qui ejus facta dijudicet.* In Psal. 51.

Consentaneous to which, was the Sentence of the (r) Council of *Toledo*, That it is unlawful to call his Power in question, to whom the Government of all is known to be delegated by Judgment from above.

(r) *Nefas est in dubium deducere ejus potestatem, cui omnium Gubernatio superno constat delegata judicio.* F. 514.

(s) *Tertullian* speaking of the Prerogative of Kings, saith, They are in his Power alone, from whom they are second, and after whom the first; and in another place (t) We worship the Emperor, as a Man next to God, and who hath obtained of God whatever he is, and is only less than God.

(s) *In cujus solius potestate sunt, a quo sunt secundi, post quem primi.* Apolog. c. 3.

(t) *Colimus Imperatorem ut hominem Deo secundum, solo Deo minorem.* Ad Scap. c. 2.

So * *Optatus* saith, Over the Emperor is none but he that made the Emperor. Therefore St. *Chrysostom* (u) saith, The King is top and Head of all Men on Earth, having none upon Earth higher than himself. So (w) *Otto Frisingensis* well notes, That Kings alone (as being placed above Laws) are reserved to Gods Judgment, and are not restrained by any secular Laws.

* *Adversus* Parm. l. 3.

(u) Κορυφὴ καὶ κεφαλὴ πάντων ὁ βασιλεύς ἐστι τῶν ἐπὶ γῆς ἁπάντων. *Hom.* 2. *ad* Pop. *Antioch.*

(w) *Utpote constituti supra leges divino examini reservati, seculi legibus non coibentur.* Præfat. Chron.

There is good Reason for all this. For if the Sovereign were obliged, *ex officio*, to give an account of his Administration to his Subjects, or had any Superior upon Earth to exact a reason of his Actions (if he governed not according to the Laws) and for Transgressions to inflict a Punishment upon him, he should cease from being a Sovereign. As in the Chapter of Non-resistance I shall further prove.

Reasons to prove it.

It is a Constitution grounded upon Necessity, to place Impunity somewhere, for the avoiding Confusion: for a Circle in Government would be of most pernicious Consequence; and infinitely absurd it must be (saith a late (x) Author) that any should challenge a right to rule the Rulers, and be Superior to the Supream. This Dernier resort, or last appeal must rest somewhere. It is a right consisting in unpunishableness for Faults, which fences the Person or Persons in whom is Supream Domination, and secures them as strongly (as Laws can do) from all Violence; and if it were otherwise a most large In-let would be made to overthrow all Authority: for every malicious Malecontent would be pretending some Arbitrariness, or oppression in the Government; for which, if they had any colour of Authority, they would be calling him to an account.

(x) *D. Digs* against Resistance, *p.* 39, 40.

(y) *Jus consistens in impunitate delictorum.*

I foresee how solid, Judicious and Religious Authors soever have brought to vouch this Assertion; yet Republican Libertines will be raising up their Crests against me, and more moderate Persons will be pulling me by the Ear, and admonishing me, lest

This Unaccountableness to Men hinders not their Obligation to God's Laws, nor makes them Tyrants.

leſt hereby I ſhould make the Sovereign lawleſs, and give him liberty to do what he liſteth. Therefore no ways deſerting the Principle of unaccountableneſs (the Miſchief of the contrary of which I think is ſufficiently diſcovered in the Chapter of Commonwealth-Government) I ſhall endeavour out of good Authors, and the examples of great Princes, to lay down ſome Rules, which Princes may think prudential for them to imitate.

First therefore I ſhall obſerve what the great (z) Philoſopher notes, That a King that governs by Law, makes no new Species of Government, from that King that makes the Law his Standard. So that governing by Laws, and according to them, in his Opinion, is very agreeable to Kingly Government, and he every where commends it as moſt acceptable to the People, and moſt ſafe for the Prince.

There is an excellent (a) Soliloquy that *Philo* brings in his King to make, and which may become the potenteſt Monarch to imitate, That he writ the Laws himſelf into a Book, that he might tranſcribe them into his Soul, and imprint into his Mind thoſe divine Characters, never to be waſhed out again: whereas other Kings therefore bear Staves for their Scepter, the abridgment of the Law ſhould be his Scepter, his rejoycing and Glory uncontroulable, the Enſign of that unreproveable Government, which is faſhioned according to the Pattern of Gods own Kingdom.

Although according to *Harmenopulus*, νόμοις ὁ Βασιλεὺς ἐκ ὑπόκειται, ἤγουν ἁμαρτήσας ἐ κολάζεται, the King is not to be ſubject to the Laws; becauſe offending againſt them, he is not puniſhed: and as St. (b) *Ambroſe* ſpeaking of *David*, ſaith, He being a King, was tyed to no Laws, becauſe Kings are freed from the Bonds or Puniſhments of Faults, being called to Puniſhment by no Laws, being protected by the Power of their Empire; yet (c) as a grave Father ſaith, God's Word, and right Reaſon muſt give a Law to the Law-giver. Therefore that weighty and elegant Expreſſion of (d) *Tertullian* deſerves conſideration by all Princes, which is this, While we temper the Majeſty of *Cæſar* under God, we commend him the more to God, unto whom alone we do ſubject him; therefore great, becauſe he is leſs than Heaven.

To the voluntary ſubmiſſion of a Prince to his own, or the Laws of his Progenitors, may be referred the memorable ſaying of *Valentinian* (e) the Younger, It is in truth a greater thing than Empire to ſubmit the Princedom it ſelf to the Laws: and that other equally imitable by Princes, Though the Laws of the Empire have freed the Emperor from the Solemnities of the Laws, yet nothing is ſo proper for Empire, as to live by the Laws, or according to them. So inthat commendation which *Plutarch* gives (f) *Alexander* the Great, That he conceived he ought to be thought ſuperior unto all Men, yet ſubject to Juſtice.

(z) Ὁ τὸν νόμον λεγόμενος Βασιλεὺς οὐκ ἔστιν εἶδος πολιτείας. *Lib.* 3. *Polit. c.* 12.

(a) Αὐτὰ ἐν βίβλῳ γεάψων, ἐνδὺς εἰς ἐμὴν ψυχὴν μεταγεάφω, καὶ ἐναπομάττωμαι τῇ διανοίᾳ θειοτύπους καὶ ἀνεκπλύντους χαρακτῆρας. Οἱ μὲν ἂν ἄλλοι Βασιλεῖς βακτηρίας ἔχοντες σκῆπτρον ῥάβδον, ἐμοὶ δὲ τὸ σκῆπτρον ἡ βίβλος ἔστω τῆς ὀρθομιδοῦς, καύχημα καὶ κλέος ἀναπαυόμενον, ἄῤῥηκτον ἡγεμονίας ἀνεπιλήπτου σημεῖον ἀρχέτυπον τὸ θεοῦ βασιλείαν ἀπεικονιδεύσης. De Creatione Princ.

(b) *Neque ullis ad pœnam legibus vocantur, tuti Imperii poteſtate.* Apol. pro Davide.

(c) Νομοθετήσει γὰρ καὶ νομοθέτης ὁ Θεός. *Greg. Naz. Orat.* 27.

(d) *Temperans Majeſtatem Cæſaris infra Deum, magis illum commendo Deo, cui ſoli ſubjicio. Ideo magnus, quia cœlo minor eſt.* Apol. c. 35.

(e) *Revera majus Imperio eſt ſubmittere legibus Principatum.* Lib. 4. c. de Leg. &c. *Licet Lex Imperii ſolennibus Furis Imperatorem ſolverit, nihil tamen tam proprium Imperii eſt, quam legibus vivere.* Lib. 3. c. de Teſtam.

(f) Πάντων ὁμοίως θεὸν ἡγεῖσθαι, τὸν δικαίου δὲ ὑπάρχειν. *Orat.* 2. *de Fortuna Alex.*

Such

Such a Prince we find *Pliny* fully deſcribe in his (*g*) *Panegyrick* of *Trajan*, That he thinks himſelf to be one of us, and ſo much the more excellent and eminent he is, that he ſo thinketh, and no leſs remembreth that he is a Man, than that he is a Ruler of Men. For he who hath nothing left to (*h*) increaſe his heighth, hath but this one way to grow by, if he ſubmit himſelf (that is, to the governing by Laws, it may be preſumed he means) being ſecure of greatneſs: and in another place he calls him equal to all; in this only greater than the reſt, That he was better: and more nearly to our preſent purpoſe, Thou haſt made (*i*) thy ſelf ſubject to the Laws, O *Cæſar*, which were not written to reſtrain the Prince by.

So we find both *Severus* (*k*) and *Antonius* often ſet down in their Reſcripts, Although we be looſed from the Laws, yet we live by the Laws.

Theſe Laws are the Laws of God, of Nature, or thoſe of the Kingdom; concerning the firſt and laſt I ſhall not now diſcourſe: concerning that of Nature the (*l*) Orator ſaith, It is not writ, but born with us, which we have not learnt, received, or read, but from Nature it ſelf have powerfully attracted, drunk in, and extracted; to which we are not taught, but made obedient, not inſtructed, but imbued.

Concerning the original of which Law, he ſaith, (*m*) That God our common Maſter and Ruler of all, is the Inventer, Judg and Law-giver, which he who will not obey, muſt fly from himſelf, (*i. e.* abandon the Dictates of his own Reaſon and Conſcience) and deſpiſe the Nature of Man; and in himſelf (*i. e.* in his Conſcience) undergo the greateſt Pains, although he ſhould eſcape all thoſe other which commonly are accounted Puniſhments. It is concerning this Law he ſaith, That from it neither the Senate nor the People can exempt us, nor is it lawful to abrogate it in the whole, nor derogate from it, (*n*) *Neque derogari ex hac aliquid licet, neque tota abrogari poteſt, nec vero aut per Senatum, aut per populum ſolvi hac lege poſſumus.*

The fore-mentioned Archbiſhop (*o*) from hence concludes, That to this moral Law of God, whether by Nature, thus written in the Hearts of Men, or more fully delivered by Gods own written word, or by juſt conſequence deduced from the grounds of either of them, the greateſt Monarch upon Earth owes as much obedience, as the loweſt and meaneſt of all his Subjects. And however the Prince is obliged to the directive force of the Law, and ſo ought to be governed by it as his Director; and though it be moſt true that (*p*) Kings are reſtrained only by the fear of God and Hell, yet we may conclude that theſe, together with the conſideration of their Intereſts, will be ſufficient Incitements to them to govern according to ſuch Laws.

Yet ſtill it is to be owned, That when a King doth not act according to ſuch Laws, he is not thereby capable of any Puniſhment for the tranſgreſſing of them: and the reaſon (ſaith the

(*g*) *Nec minus hominem ſe quam hominibus præeſſe meminit.*

(*h*) *Cui nihil ad augendum faſtigium ſupereſt, hic uno modo creſcere poteſt, ſi ſe ipſe ſubmittat ſecurus magnitudinis ſuæ.*

(*i*) *Ipſe te legibus ſubjeciſti, Legibus, Cæſar, quas nemo Principi ſcripſit.*

(*k*) *Licet legibus ſoluti ſimus, attamen legibus vivimus.* Inſtit. quibus modis Teſtam. infirment. 8. Vet.

(*l*) *Non ſcripta, ſed nata lex, quam non didicimus, accepimus, legimus, verum ex natura ipſa arripuimus, hauſimus, expreſſimus, ad quam non docti ſed facti, non inſtituti ſed imbuti ſumus.* Pro Milone.

(*m*) *Unus erit communis quaſi Magiſter & Imperator omnium Deus, ille legis hujus inventor, diſceptator, lator; cui qui non parebit, ipſe ſe fugiet, ac naturam hominis ſpernabitur, atque hoc ipſo luet maximas pœnas, etiamſi cætera ſupplicia quæ putantur effugerit.* Lib. 3. de Repub.

(*n*) *Ibid.*

(*o*) *Uſher's* Power of Princes, *p.* 70.

(*p*) *Reges ſolo Dei timore metuque Gehennæ coercentur.* Iſidorus 3. Sent. c. 31.

(q) Power of the Prince, *p.* 81.

the learned (*q*) Primate) is obvious, becauſe the inflicting of a puniſhment is an Act of a Superior to an Inferior; and to make one upon Earth Superior to the Supreme Governour, would imploy an abſolute contradiction: though a Father or Maſter were never ſo faulty, none would be ſo abſurd as to think, that their Servants or Children might chaſtiſe them.

When I reflect on that diſmal Day, when the wicked High Court of Juſtice arraigned and ſentenced the moſt Innocent, Juſt and Religious King, that poſſibly hath worn a Crown ſince our Saviours time; I always ſtand amazed, and read, or meditate on that Tragical Act with a concern next to that of our Saviour's ſuffering: All that black and bloody Scene was acted by Men, of and upon the Principles ſucceſsful Rebels made uſe of, That Kings are admitted and truſted with a limited Power to govern by, and according to the Laws of the Land, and not otherwiſe; and by their Truſt, Oath and Office, are obliged to uſe the Power committed to them, for the Good and Benefit of the People, and for the Preſervation of their Rights and Liberties; which they charged that Bleſſed King to have deſignedly violated.

The Preamble to the Treaſonable Charge againſt King *Charles* the Firſt.

(r) His Majeſty's Speeches and Tryal, *p.* 429.

To which I ſhall give only ſome (*k*) ſhort Heads of his Majeſties Anſwer, which if they had been weighed, were enough to confound all their arguing: He demanded by what lawful Authority he was ſeated there; he had a truſt committed to him by God, by old and lawful Deſcent, that he would not betray, to anſwer to a new unlawful Authority; That *England*

Pag. 431. was an Hereditary Kingdom: He tells them how great a ſin it is to withſtand lawful Authority, and ſubmit to a Tyrannical or

Pag. 435. Unlawful: That Kings can be no Delinquents: That Obedience unto Kings is ſtrictly commanded in the old and new

Eccl. 8. 4. Teſtament, particularizing that one place, *Where the word of a King is, there is Power; and who may ſay unto him, What doſt thou?* That no Impeachment can lye againſt him, all running in his Name: That the King can do no wrong; the Houſe of Commons never being a Court of Judicature, can erect

Pag. 439. none: He owns an Obligation to God, to defend and maintain the Liberties of his People, againſt all ſuch Illegal and Arbitrary Proceedings. But 'twas to no purpoſe to ſhow ſuch Crown-Jewels before ſuch Wolves and Bears, that were gaping for his Blood, and would not admit his only requeſt to them to be heard, for the Welfare of the Kingdom and Liberty of the Subject (before they precipitated Sentence againſt him) before the Lords and Commons, and preſſed it, That it may be it was ſomething he had to ſay, they had not heard before Hand. But nothing his ſacred Majeſty could ſay, would move thoſe, who, under a vile and notorious Lye, in the Name of the People, the Supreme Authority, as they called it, paſſed that barbarous Sentence againſt that ſacred Head, to the amazement of the whole World, ſufficient to raiſe the utmoſt Indignation of all good Men, againſt ſuch barbarous Principles and Proceedings.

CHAP.

CHAP. XIX.

That the Sovereign may diſpenſe with the Execution of the Laws of his Country in ſeveral Caſes.

HAving diſcourſed of the Kings being unaccountable to any but God Almighty, when he governs not according to the Laws of God, Nature, or his Dominions; upon that Foundation, That there cannot be two Supremes here upon Earth, in one Kingdom: I come now to diſcover what Power Kings in general, and our Kings in particular, have to diſpenſe with the Execution of the Laws upon ſome caſes; for it is far from my thoughts, ever to ſuggeſt any ſuch dangerous aſſertion, That Princes in general may diſpenſe with the Execution of the Laws.

The Connexion of this with the foregoing Chapter.

Plutarch (*a*) ſetteth this down as a chief point of that natural skill which *Philopœmen* had in Government, That he did not only rule according to the Laws, but over-ruled the Laws themſelves, when he found it conducing to the Weal publick.

For as the (*b*) Emperor ſaith (whilſt the Laws ſtand in force) it is fit that ſometimes the Kings Clemency ſhould be mingled with the ſeverity of them; eſpecially when by that means the Subject may be freed from much Detriment and Damage.

Princes, according to the (*c*) Judgment of great Lawyers, have Power to judge according to their own Conſcience, and not according to the Letter of the Law: and no doubt it was ſuch written Laws as theſe that (*d*) *Juſtinian* the Emperor meant, when upon the enacting of a Conſtitution of this kind, he added thereunto this Limitation, From all theſe things which have been ſaid by us, let the Emperors State be excepted, whereunto God hath ſubjected the very Laws themſelves, ſending him as a living Law unto Men; who therefore in another place, aſſumeth to himſelf the Title of a Father of the Law. Whereupon the (*e*) Gloſſator maketh this Obſervation, Note, That the Emperor is the Father of the Law, whereupon the Laws alſo are ſubject to him.

So the great (*f*) Schoolman ſaith, The Prince is above the Law ſo far, that if it be expedient, he may change the Law, and diſpenſe with Time and Place; as when a Man is condemned to baniſhment, the Prince, if he ſee cauſe, may revoke him from thence; and therein, ſaith (*g*) *Accurſius*, his own Will is accounted a great and juſt cauſe,

Magna & juſta Cauſa eſt ejus Voluntas.

The Reaſon of theſe Aſſertions is couched in what *Æneas* (*h*) *Sylvius* obſerves, That there is a certain other thing to

(*a*) Οὕτως ἡγεμονικὴν φύσιν ἔχων, ὑ χ᾽ τὰς νόμους, ἀλλὰ χ᾽ τοῦ νόμων ἄρχειν ἐπίσατο πρὸς τὸ συμφέρον. Compar. *Fluminii* & *Philopœmenis.*

(*b*) Τῇ τοῦ νόμων ἀκριβείᾳ χ᾽ Βασιλικὴν ἐγκαταμίξαι φιλανθρωπίαν δεῖν. *Juſtin. Jun. Imp. præf. Conſtit.* 3.

(*c*) *Princeps eſt ſupra legem, adeo quod ſecundum conſcientiam ſuam judicare poteſt.* Cyrus in L. Reſcript. &c.

(*d*) Πάντων τοῦ εἰρημένων ἡμῖν ὑ Βασιλέως ἐξαιρέτω τύχη, ἧς χ᾽ αὐτὰς ὁ Θεὸς τὰς νόμους ὑποτέθεικε, νόμον αὐτὴν ἔμψυχον καταπέμψας ἀνθρώποις. *Juſtinian. Novel* 105.

(*e*) *Nota, Imperatorem vocari patrem Legis, unde & Leges ſunt ei ſubjectæ.* Gloſſ. in Novel. 12. c. 4.

(*f*) *Princeps eſt ſupra legem in quantum ſi expediens eſt, poteſt legem mutare, & in ea diſpenſare pro loco & tempore.* Vid. Thom. in 1. 2. q. 96. Artic. 5. ad 3.

(*g*) *Gloſſ. in lib. 4. de Pœnis.*

(*h*) *Convenit Imperatori Furis rigorem æquitatis fræno temperare, cui ſoli inter æquitatem juſque interpoſitam interpretationem licet & incumbit inſpicere.* De Ortu & Authoribus Imperii.

which the Emperor is more obnoxious than to the Law, and that is Equity, which is not always found written: Now if the Law doth command one thing, and Equity perſwade another. It is fit the Emperor ſhould temper the Rigor of the Law with the Bridle of Equity; as he, who alone may, and ought to look unto that Interpretation, which lyeth interpoſed betwixt Law and Equity; ſince no Law can ſufficiently anſwer the Varieties and unthought on plottings of Mans Nature, and in Tract of Time, Laws at firſt, juſt, or *in terrorem*, become unprofitable and harſh: and this moderating of Laws (which is called, ſaith he, Ἐπιείκεια, or Equity) is ſo annexed to the Prince, that by no decree of Man it can be pulled from it.

How far the Kings of *England* may diſpenſe with their Laws.

This Abſoluteneſs I have hitherto mentioned out of ſuch great Authors, is not practiſed by the *Engliſh* Sovereign; for he challengeth no ſuch Power to make or abrogate Laws, without the Concurrence of the two Houſes: But he hath a ſufficient Prerogative by diſpenſing, conniving or putting ſome Laws more in Execution than at other times, ſo to manage the Execution of them, as the Government, and conſequently the Peoples ſafety be not prejudiced. So though there be a Law for Triennial Parliaments; yet when a Prince finds a Potent Faction that may influence the Electors, ſo as the meeting of ſuch a Parliament at ſuch a time, may be hazardous to the publick, there being no Penalty can be inflicted on a King for the Omiſſion, and the Danger being viſible, that ſuch a Factious Parliament was only wanting, to bring to perfection the Deſign of Traiterous and Seditious Perſons: It is very agreeable to Reaſon, that a Prince, in ſuch a juncture, ſhould prefer the publick Peace of his Kingdom, and the ſecurity of his Crown (by the omitting ſuch Summons) than to hazard all by convening them. There are other Caſes may intervene, wherein the Reaſon of State, the *Salus publica*, may require the diſpenſing with, or ſuſpenſion of the Execution of ſome Laws: As in time of open Rebellion, the King's arming of ſuch as he may moſt ſurely confide in, though they take not ſuch Oaths, or be ſo qualified, as the Laws require, and as in ſeveral other Particulars, might be inſtanced in.

I ſhall only add two Authorities of our own Country, who were well verſed in the matter; the one a great Divine, and the other as great a Lawyer and Stateſman: *Firſt*, the learned (*i*) Primate ſaith, Such poſitive Laws being (as other works of Men are) imperfect, and not free from any Diſcommodities, if the ſtrict Obſervation thereof ſhould be purſued in every particular: It is fit the Supreme Governour ſhould not himſelf only be exempted from Subjection thereunto, but alſo be ſo far Lord over them, that where he ſeeth cauſe he may abate, or totally remit the penalty incurred by the breach of them; diſpenſe with others for not obſerving of them at all, yea generally ſuſpend the Execution of them, when by experience he ſhall find the Inconveniences to be greater than the profit that

(*i*) *Uſher's* Power of Princes, *p.* 76.

was

was expected ſhould redound thereby, to the Commonwealth.

The *Second* Authority ſhall be that of the Earl of *Clarendon*, who affirms, That by our Laws, the King hath, in many Caſes, the Power of diſpenſing with the Execution of the Law, eſpecially in granting pardon for the tranſgreſſing of them, except in thoſe Caſes where the Offence is greater to others than the King, as in murder of an Husband or Father: therefore upon an Appeal by them, the Offendor may ſuffer after the Kings pardon; which ſhows how tender our Laws are of protecting the Lives of Subjects. (k) Survey, *p.* 127.

This Prerogative of Kings (*l*) *Bodin* avouches among the Rights of Sovereignty, to pardon the Perſons, the forfeiture of their Goods; and to reſtore the attainted Honours of thoſe condemned by righteous or unrighteous Judgment; according to that of St. (*m*) *Hilary* in St. *Auguſtine*, *Imperatori ſoli licet revocare ſententiam, & reum mortis abſolvere, & ei ignoſcere*: That it belongeth only to the Emperor, to revoke the Sentence or Judgment; and to abſolve and pardon the guilty. For as *Themiſtius* ſaith, One thing becoms a Judge, and another thing a King; the one is to obſerve the Law, the other hath power to correct the Laws themſelves, and to qualifie the ſeverity and harſhneſs of them, as being himſelf a living Law, and not confined to the unchangeable and unalterable Letter. For that end, ſaith he, it ſeemeth, God did ſend from Heaven the Regal Power into the Earth, that Men might have a refuge from that dead and immoveable Law, to the living one, as he inſtanceth in Capital Offenders: For we have ſeen (ſaith he) Men returned to life from the Gates of Death, whom the Law indeed ſent thither, but the Lord of the Law, τῦ νόμυ κύριος, brought back from thence again. (l) 3. *Rep.* (m) *Q.* 115. *ex Veteri & Novo Teſtamento.*

As to the Power of Equity, claimed by the great *Civilians*, the Adminiſtration of that is veſted in the Chancellor or Lord-Keeper of the Kings appointment, who is the Keeper of the Kings Conſcience, or Diſpenſer of that reſerved Power in the King.

CHAP. XX.

That the Sovereign is not to be reſiſted or rebelled againſt, upon pretence of ill Government, Irreligion, or any ſuch matter.

The Neceſſity of this Diſcourſe.

OUR Republicans of 1641. ſet themſelves, with all their skill and cunning, as well as force, to overthrow the Doctrine of Non-reſiſtance; and to eſtabliſh that of its being lawful, not only to riſe in Arms, for the defence of their Liberty, Property and Religion (the gilded pretences of all Rebellions) but to proſecute that bleſſed King and all his Loyal Subjects, in the higheſt Degree of Cruelty and Revenge, that they could deviſe, or their ſucceſs embolden them to commit. Therefore it is a moſt neceſſary Duty of all that wiſh well to themſelves, as well as the Government, to oppoſe ſuch dangerous Poſitions and Practices.

The Authorities I have cited in the two Chapters of Sovereignty, are but the gleanings of what may be found in learned Men on this Subject; and ſince I ſhall have occaſion hereafter (when I treat of the Subjects duty) to handle this matter more particularly, I ſhall be the ſhorter in this, and refer the curious Reader to the elaborate Treatiſe of Mr. *Dudley Digs*, Of the unlawfulneſs of Subjects taking up Arms againſt their Sovereign; and to the Glory of his Age, for Learning, Loyalty and Sanctity, the Lord Primate *Uſher's Power of the Prince*, and His *Second Part of Obedience*; to the judicious and learned Sir *George Mackenzie* his *Jus Regium*, and (*a*) others that treat of this Subject, *ex inſtituto*: deſiring all thoſe, who have imbibed, or would avoid any of theſe dangerous Principles, that they will ſeriouſly conſult thoſe Authors, out of whom I ſhall only hint ſome few of their Reaſons and Arguments, that may be as Antidotes againſt the moſt deſtructive poiſon of reſiſting Sovereign Princes, or allowing any Order of Subjects the Liberty upon any Pretence of Miſgovernment, to call their Sovereigns to an account.

(*a*) *Arniſæus. Zeiglar de Jure Majeſtatis c.* 1. *n.* 12. *Salmaſii Defenſio Regia. Grotius lib.* 1. *c.* 4. *de Jure Belli.* Dr. *More's* Divine Dialogues. Dr. *Moulin's Philanax Anglicus. Sam. Petit's Diatriba, &c.*

In the firſt Place it ought to be conſidered, that by conſtituting any check upon Sovereign Princes, all Deciſions and Controverſies muſt be writ in Blood; and it would lay a fruitful (*b*) Seed-Plot of civil Wars, by indulging the moſt pernicious Freedom of righting our ſelves: for though the People, or ſome ambitious Male-contents, may not be ſo happy as they could wiſh; yet to make uſe of Force, as a Remedy, will certainly encreaſe the Miſeries.

(*b*) *Non tanti eſt civilia bella movere.* Arguments againſt Reſiſting of Princes.

Would make Princes always jealous.

If this Principle be granted, it will make Sovereigns always jealous, and conſequently ſtudious to ſecure themſelves againſt ſuch oppoſition by ſtrong Hand, which will be very galling to the Subject.

Beſides,

Beſides, upon all differences betwixt the King and People, no Judge can be found to determine the Matter; and to allow this Power to the People, is to allow a Difference that can have no end, before one half of the Nation have ruined another, as by ſad Experience we found in our late Civil Wars.

No Judges can be betwixt King and People.

Further it ought to be conſidered, That this not only overthrows Monarchy, but all Government; for who will obey, when they can reſiſt? Under all Governments we ſhould have one Rebellion (*c*) riſing out of the Aſhes of another; for only thoſe who prevailed ſhould be ſatisfied, and all the reſt would certainly conclude, that they might more juſtly oppoſe thoſe Uſurpers, than the firſt did their lawful Prince: and thus, Government (which is deſigned for the Security, Peace and Tranquillity of the State) ſhould be perpetually embroyled, and by the cruel Hoſtilities of emulous Factions, maſtering one another; the common People, and thoſe who would deſire to live peaceably, ſhould be the continual Prey of Ravenous Harpyes and Vultures.

It overthrows all Government.

(*c*) Juſt Right of Monarchy, *p.* 92, 93.

If we allow Subjects to take Arms againſt their Prince; we ought to allow Children the like Liberty againſt their Parents, Servants againſt their Maſters, Soldiers againſt their Officers, and the common Rabble againſt their Magiſtrates: For the King in his Sovereignty, eminently comprehends all theſe Relations.

Not allowed in Families.

Beſides, what reaſonable Man can think (much more ought to aſſert) that it is fit to allow this Principle; when all Ages, and daily Experience teach us, That the numerous Party of Mankind is difficultly, by the moſt rational and ſtricteſt Laws, contained in their duty: What might we therefore expect, if every Man ſhould be inveſted with Power to be his own Judge, and be looſed from all Laws, and encouraged to the Duty (as it muſt be upon this Doctrine) of tranſgreſſing, diſobeying, and breaking all Laws that eſtabliſh a Government uneaſie to him.

Miſchiefs of the Peoples Liberties.

It cannot but be obſerved, and by daily Experience is found, that in all Popular Congreſſes, in all Elections, or public Votes of the Body of the People, how violent they are, when oppoſed by ſome few: How Inſolent when they find their Strength, that *nos numeri ſumus*: And how Cruel when enraged, as in the Hiſtory of Cardinal *Bentivolio* (to go no higher) in that of *Naples*, under *Maſianello*, and that of *Amſterdam* againſt the *De Witts*, and many more might be inſtanced in. And it will certainly be allowed, that the Multitude (being cajoled by Pretenders to be their Patriots, and the publick-ſpirited maintainers of their Liberties, Properties and Religion (the uſual Shams and Wheedles, ambitious and contriving Men make of to ſeduce them) find theſe very Men more unjuſt, oppreſſive, exorbitant and Arbitrary than the worſt of Princes.

Therefore

Therefore since the multitude is no better qualified to judge, nor juster when led by such Chieftains: Surely all prudent Men, and Lovers of their own and their Countries Happiness, must conclude it much safer, and conducibler to the Publick Weal, to obey those whom God hath set over them; and the Laws, their Duties and Oaths oblige them to bear Faith and Allegiance to; than to subject themselves to their fellow-Subjects, who can have no other Title but rebellious Success to warrant them to harass, butcher, and ruin them. Whereas at the worst in Kings, we have but an ill Master; but allowing Subjects to usurp, we may fight our selves into slavery under hundreds of Tyrants, and those too fighting one against another, so that we shall not know even which of those Devils to obey.

(d) *Idem, p.* 92. Pretenders to Reformation greatest Oppressors.

Would we consult the Histories of preceding times, or our own Experiences, we should find the Pretenders to reform (*d*) Government, have proved the greatest Cheats to those they have seduced. They in reality neither promoting Liberty or Religion, but under that Vizard-mask, shrouded other black designs; and when they succeeded in their Attempts, they became infinitely more oppressive to the People, than the lawful Powers ever had or could be, they pretended to protect them from the Rigor of. And when (*e*) others rose against them on the same pretence, they did in the severest manner declare that Rebellion in others, which they contended to be lawful in themselves. Whoever will not be convinced of this (if he by woful Experience knew it not) may read it in the Histories of our late Miseries; and if he have any Spirit of Ingenuity or Christianity, will totally abandon such Principles, as brought so wasting a Calamity on our Country.

(e) *Idem, p.* 90, 91.

The Constitution of *England*'s Government Monarchical.

In the Constitution of our *English* Government, we have but one Sovereign, to whom we owe Fealty, Homage, Allegiance, and Obedience by Oaths and Laws. Even all the Acts of Parliament that acknowledg this a Monarchy, are so many solid Arguments and Testimonies of the Kings Supremacy; and to set up any co-ordinate Power whatsoever, would be to create *Regnum in Regno* in Temporals, as the Phanatick Principle, That *Dominium fundatur in Gratia*, or in *Orthodoxa Religione*, doth in Spirituals: Than which no Sentiment was ever invented more dangerous to overturn States, and bring all to Confusion.

No new Government now to be framed.

If indeed we were to form the Government, under which we were to live, we might agree upon setting up *Ephori*, Tribunes of the People, *Dæmagogues*, *Calvin's* Three Estates, or a co-ordinate Power in the two Houses, as so many checks upon the Supreme Governour. But we are born under a Monarchy fix'd by Law and Consent, time out of Mind; so that we may as well yield to the Levellers reducing us to the pure pute State of Nature, as the forming such an *Idæa* of a Commonwealth, wherein a Sovereign is to be resisted, if any factious Party think themselves aggrieved.

It

It is to be well conſidered, that though *William* the Conqueror had little or no Title of Right, yet his Conqueſt, with the Subjects ſubmiſſion, then, and in after Ages to his Succeſſors, and the Obligation of Oaths, and ſubſequent Acts of Parliament, ſupplied all Defects; and all the Limitations of that abſolute Power which accrued by Conqueſt, being the free Conceſſion of himſelf and his Succeſſors (which appears in their Grants by way of Charter, as I ſhall hereafter have occaſion to enlarge upon) it is moſt evident that the King's Power is abſolute, where no Law (*f*) can be produced to the contrary, and no ſpecial Caſe can be determined by the Subject to the Kings diſadvantage: and though the Kings ſucceeding the Conqueſt (to ſweeten Subjection,) *quædam jura pactis minuerunt*, and theſe Acts of Grace were confirmed by Promiſe and Oath; yet we find no Footſteps of any ſecurity given, that ſhould endanger the Perſon or Regal Authority, by giving to their Subjects any legal Power to unking them if they ſhould not perform Covenant. Nor could it be rational to expect ſuch; for they knew full well if they ſhould not break ſuch Promiſes, yet a Pretence that they did ſo (as we have known it was alledged concerning the Coronation Oath) might upon the firſt opportunity create a Civil War.

(*f*) *D. Digs* Unlawfulneſs of Reſiſting.

No Contract betwixt King and Subjects, whereby they may exact an Account.

Therefore their Subjects had as little reaſon to accept, as the Kings had to offer ſo pernicious a Security, as would bring both Parties into ſuch a ſad Condition. For if Rebellion were to be allowed in any Caſe, that Caſe would be always pretended: and though the Prince were Juſt, Wiſe, and Religious; yet ambitious Men (to compaſs their own Ends) would impute to him Oppreſſion, Weakneſs, or Irreligion, as the World knows by too ſad Experience was verified in King *Charles* the Martyr; who taking his meaſures of others Sincerity, by the rule of his own Heart, ſuffered pretences of publick Good to grow up to inſolent Tumults, and at laſt to Rebellion; and notwithſtanding his Exemplary Practice in his publick Devotions, was traduced to have but handſomly diſſembled, and favoured another Religion in his Heart; and at laſt brought before a crew of Regicides, impeached of breach of Truſt, Tyranny, and I know not how many horrid Crimes againſt his Subjects; who yet died the Peoples Martyr, and the Royal Aſſerter of their Liberties and Priviledges, which all his Subjects found to expire with him; the greateſt Arbitrarineſs and cruelleſt Tyranny, being, during their Power, exerciſed by the new Commonwealth Men, that ever was read of in any Hiſtory.

Writers who lived under Commonwealths, no Guides to us.

Thoſe who read Books, among thoſe of the Sect of Libertines in Politicks, and ſo much magnify the great name of Liberty of the Subject and co-ordinate Powers, converſe moſt in *Greek* and *Latin* Authors, who lived under Commonwealths, and ſo were profuſe in the commendation of their Country Government, againſt Uſurpers; or elſe theſe admired Authors were (*g*) *Stoicks*, who out of a ſelfiſh Pride, equalled themſelves

(*g*) *Jus Regium, p.* 134.

ſelves not only to their Kings, but to their own Gods; even as our Quakers who pretend a Light within them a more ſure guide to them than the Law.

We have more reaſon to commend our Government, than the *Romans* or *Grecians* theirs.

Now the ſame reaſon they had to commend their form of Government, (and ſo much more as Monarchy is preferrable to Ariſtocracy) we in *England* have reaſon to commend our Conſtitution, where our Kings are truly the Fathers of their Country; and if they would ballance the convenience or inconvenience of either Government, they would ſoon diſcover it. For whereas they ſay that the Doctrine of Non-reſiſtance is the readieſt Motive to eſtabliſh Tyranny: It is much more certain and experimentally known that the Leaders of the Rabble always prove ſuch, and that the Diſtractions of a civil War (which ordinarily are occaſioned by the pretence of reforming ſomething amiſs in the Governours, and Competitions betwixt Perſons for Soveraignty) deſtroy more than the Luſts of any one Tyrant can do; which made *Lucan*, a Republican, and of the *Pompeian* Party, conclude, after a ſad review of the continual Civil Wars betwixt *Sylla* and *Marius*, *Cæſar* and *Pompey*, without touching upon what followed under the Triumvirs,

Fœlices Arabes, Mediquę, Eoaque tellus,
Qui ſub perpetuis tenuerunt Regna Tyrannis.

The Security we have, that no Arbitrary Government can be exerciſed in *England*.

And if he preferred even the Tyranny or abſoluteneſs of thoſe Kings, before the State of Civil Wars; how much more have we reaſon to ſubmit, and that chearfully, to the moſt eaſy Yoak of the Sovereignty of our Princes. We need not be ſolicitous, that their unaccountableneſs to their Subjects ſhall prompt them to Tyranny, becauſe we have good Security (as ſtrong as humane Wiſdom ever invented) that we ſhall live happily under that Conſtitution which our Fore-fathers enjoyed the Benefit of in an high Degree, never diſtruſting the ſound temper of the Policy.

For firſt our Kings ſwear at their Coronations to preſerve the Laws, Liberties, Properties and Religion. Secondly, If they ſhould command illegal things, the Executors of them are reſponſible to Parliamentary Inquiſitions. Laſtly, the Intereſt of the King is the ſame with that of the Subject, as to their Proſperity and Miſery; ſo that a King will always conſult the good of his Subjects: which made (*h*) *Lipſius* tell the Sovereigns, That they govern over Men but for their good, and are not only Lords and Judges of Matters, but Tutors and Adminiſtrators; That the Government of the Commonweal, by God and Men, is placed in their Boſoms or Laps, but ſo as to be cheriſhed and protected there.

(*h*) *Præeſtis hominibus, ſed hominum cauſa, nec domini modo & Arbitri rerum, ſed Tutores & Adminiſtratores eſtis. Collata eſt in ſinum veſtrum a deo & hominibus Reſpublica, ſed nempe in ſinum & ut foveatur.* Epiſt. Dedicat. ad Imp. Reges & Principes.

To conclude this diſcourſe, We have heard of, or ſeen, the ſad Calamities the Republican Rebellion brought upon all his Majeſties Dominions, when the mild Government of King *Charles* the Firſt was altered to the moſt Bloody and Tyrannical one of his

his rebellious Subjects that any Age could parallel; and we have had Experience of the merciful Government of his Royal Son and Succeſſor, and have lived to ſee all the Eſtabliſhments of Uſurpers brought to Confuſion.

We have ſeen a formidable Rebellion burſt forth in our Magnanimous King *James* theSecond's Reign(which had been forming ſeven Years before) utterly overthrown in two Months; and we cannot peruſe Hiſtories, but we muſt meet with infinite Examples of the ſad devaſtations ſuch Rebellions bring to their Country, and the unſucceſsfulneſs of them. Therefore I would earneſtly adviſe all Malecontents, never to make their Country's Ruine, and the ſlain Carcaſſes of their Countrymen, the Steps by which they muſt aſcend the Scaffolds, or the Rounds of the Ladders they muſt mount the Gallows, which, without a Prince's Clemency, are the ſure Rewards of all Rebels, and their certain Fate.

CHAP. XXI.

Of the King's Authority in making Laws.

HAving treated of the King's Sovereignty, I come now to treat of that Top-branch of it,the Power and Authority of the King in giving Laws to his Subjects. I muſt be ſhorter on this Head, becauſe the following Chapters, concerning the Great Councils, and thoſe particularly concerning Parliaments, will more fully illuſtrate and confirm this Particular.

In all Government, the Legiſlative Power muſt be fixed ſomewhere; and it is the concurrent Opinion of all (*a*) Civilians, That all Laws do flow from the Prince, as from a Fountain.

(*a*) *Ab eo, i. Principe, tanquam a fonte, Leges omnes & Jura emanant.* Vinii Epiſt. Dedicat. *Il. Comment. in Inſtit. lib.* 1. *tit.* 2. *p.* 13. *a.*

The Word *Lex* and *Jus*, by *Cicero*, and the *Romans*, were moſt-what uſed promiſcuouſly; though *Lex*, or Law, did frequently ſignifie what was writ, and enjoyned to be obſerved. Therefore the *Plebiſcita* of the *Romans* at firſt were not called Laws, becauſe they obliged only part of the Citizens, till the *Hortenſian* Law gave them the ſame force as thoſe which were accorded in *Comitiis Centuriatis*.

The *Plebiſcita* were among the *Romans*, after the expulſion of their Kings, binding Laws; and they were made thus: The Magiſtrates who had the greater *Auſpices* in the Commonwealth (ſuch were the Conſuls, Dictators, or Pretors) propoſed the Laws to the Aſſemblies of the People, and asked them by the Name of *Quirites*, Whether they willed or commanded them? And they writ in the Table either *A.* for *Antiquo*, or *U. R.* for *Uti Rogas*, *As thou askeſt*.

The *Plebiſcita* of the *Romans*.

The *Tribunes* and *Plebeian Ædiles* were the proper Magiſtrates of the *Plebs*; but the *Ædiles* were never known to de-

mand the Peoples Suffrage to the Laws. The *Plebiſcita* at firſt were made in the Aſſemblies of the (*b*) Tribes, and the Laws in the Hundredary or Curiate Aſſemblies. But, to be ſhort, *L. Valerius* and *M. Horatius* being Conſuls, it being a doubt whether the Fathers were obliged by the *Plebiſcita*, they paſſed a Law in the *Centuriata* (*c*) *Comitia*, That whatever the *Plebs* ſhould enjoyn in the Convention of the Tribes, ſhould be binding to the People; which was confirmed by (*d*) *Q. Hortenſius* the Dictator, at the third Seceſſion of the People to the *Janiculum*; therefore (*e*) *Pomponius* ſaith, That the manner of conſtituting a Law and *Plebiſcitum* differed, but the Power was the ſame.

(*b*) *Tributis Comitiis, Centuriatis, aut Curiatis.*

(*c*) *Anno V. C.* 304, 305. *Howel.* In the *Curiata Comitia*, ſaith *Dionyſ.*

(*d*) *Anno V. C.* 367. *Vinnius.*

(*e*) *Inter Legem & Plebiſcitum ſpecies intereſſet conſtituendi; poteſtas autem eadem eſſet.* Sect. de Origine Juris. *Id. p.* 14.

That which the Senate commanded and conſtituted, was called a *Senatus conſultum*. *Vinnius* proves, That while the *Roman* Republic ſtood, the Laws were made by the People alone, and not by the Senate: For they had permitted to them, as the Publick Council, to take cogniſance and Decrees of things that related to the conſtituting the Republic; but ſo, that all Matters of great moment were not eſtabliſhed, unleſs the (*f*) People confirmed them. So that by no Decree of the Senate, either any new Law was introduced, or any old one abrogated. So that neither in *Julius Cæſar*, or *Auguſtus*'s time, we find mention of their Decrees: And (*g*) *Bodin* affirms, That from the time of the expulſion of the Kings, to the Empire of *Tiberius Cæſar*, the Senate had no power to make Laws, but certain Annual Decrees, which yet did neither bind the People or *Plebs*.

Senatus conſultum, and Power of the *Roman* Senate.

(*f*) *Polyb. lib.* 6. *Dionyſ. Halic. lib.* 4. & 7. *Senatus conſulta nullam vim legis habebant niſi plebs ea probaret.*

(*g*) 1. *de Repub. c.* 10.

During the Civil Wars, there was ſcarce any Authority but in the Emperors, till *Auguſtus* in ſome meaſure reſtored the Power of the *Comitia*, as *Suetonius* tells us, who ſaith, That *Julius Cæſar* (*h*) did not wholly abrogate the Power of the *Comitia*, but divided the Power betwixt himſelf and them; and *Auguſtus* brought back the ancient *Jus* of the *Comitia*: And *Tacitus* tells us of theſe times, *Ad eam diem, etſi potiſſima arbitrio Principis, quædam tamen ſtudiis Tribuum fiebant*; That to that day, although moſt things were done by the Will of the Prince, yet ſome things were done by the Study of the Tribes.

(*h*) *Jus Comitiorum non in totum populo ademerat, ſed cum eo partitus eſt.* Sueton. in Julio.

Yet it is obſerved, That from what time the Laws and the (*i*) *Plebiſcita* were weakned, or leſs regarded, the Senate began to make Laws; but it was by the Connivence and Indulgence of the Princes, as appears by the Orations the Princes had in the Senates. Therefore (*k*) *Tacitus* makes his Prince ſole Arbiter of Affairs by Kingly Right and Name; and gives the Reaſon for it; Becauſe the nature of Commands conſiſts not otherwiſe, than that the laſt reſort be to One: *Ea eſt imperandi ratio, ut non aliter conſtet quam ſi uni reddatur.* So the Judicious (*l*) *Livy* ſaith, Kings are Lords of Things and Times, attracting all things by their Counſel, not following them. So *Mecænas*'s Advice was to (*m*) *Auguſtus*, inſenſibly and gradually to draw to himſelf the Appointment of Laws and Magiſtrates. However,

(*i*) *Ex eo igitur tempore legibus & plebiſcitis quieſcentibus Senatus jus facere cœpit: quanquam non tam propria Auctoritate quam conniventia quadam & indulgentia Principum.* Vinnius, *p.* 14.

(*k*) *Solus arbiter rerum Jure & nomine Regio.* 1. Annal.

(*l*) *Reges domini rerum temporumque, trahunt concilia cuncta, non ſequuntur.* Lib. 8.

(*m*) *Inſurgere paulatim munia legum, & magiſtratuum ad ſe trahere.* Tacit. 1. Annal.

ever, by *Pliny* it is recorded, to the Honour of *Trajan*, That he would make no Laws without the Senate: as *Alexander* did nothing in Military Affairs, without his Council of Officers; or in other Matters of moment, without his Council of Prudent Men.

Thus the Senate had a ſhadow of Authority, and were ſomething like the Parliaments of *France*, to ratifie the King's Edicts: And it was ſome advantage to a Senate, that the Prince concurred with (*n*) them, *& è contra.* So we read, That *Theoderick* the *Goth* paſſed that obliging Complement upon them, (*o*) *Our Aſſent (Fathers of the Senate) accompanies your Judgment.*

(*n*) *Senatus Potentiam augendo ſuæ ſerviebant.* Suet. c. 29.

(*o*) *Judicium veſtrum (Patres Conſcripti) noſter comitatur aſſenſus.*

So *Bodin* obſerves, That whenever the Senate had any Authority, it was when it was *particula quædam Majeſtatis*, and had it not *vi Senatus, ſed quia ſimul ſuſtinet partem Majeſtatis*: So he would aſcribe to the Senate *Jus decernendi, & Sententiam pronunciandi*; but to want the abſolute Legiſlative Power. For if the Senate had obtained that, the Government muſt have been Ariſtocratical.

How the *Equites*, by a Law of *Caius Gracchus*, Tribune of the People, were brought in to be Judges, whereby they had the Lives and Fortunes of the Senators and Nobles in their Power, is fully diſcourſed of in the Judicious Hiſtory of (*p*) Dr. *Howel*, to whom I refer the Reader.

(*p*) *Lib.* 3. *c.* 9. *p.* 722.

There were alſo *Prætorian* Laws, and the *Reſponſa ſapientum*; but theſe ſeem to be Judgments paſſed in Courts, rather than Laws, and are like our Precedents and Reports: So I paſs them, as alſo the Laws of the Twelve Tables, only noting, That in the great Strife betwixt the Tribunes of the People and the Senate, about the 298 of the City, *Sp. Poſthumius*, and others, were ſent to *Greece*, to fetch a Tranſcript of their Laws; and they were propoſed to the view of all Men in Ten Tables, and a *Senatus conſultum* paſſed for ratifying them; and the Queſtion being put to the People, in the *Centuriata Comitia*, they were confirmed moſt religiouſly, in the preſence of the *Pontifices*, *Augurs*, and *Prieſts*, and were engraven in Braſs: By which Account we have the true Method of the *Roman* making of Laws.

Laws of the Twelve Tables.

The Power of the Senate, and all Magiſtrates Authorities, being weakned in the Wars of *Marius* and *Sylla*, and ſtill more in thoſe betwixt *Pompey* and *Cæſar*, the prevailing Party ſtill made the Senators and Tribunes, Conſuls, *&c.* of their Faction. The like was done in *Auguſtus*'s time; after the Defeat of *Anthony*: ſo that both *Julius* and *Auguſtus* got the *Tribunitian* Power and *Conſularſhips*, and *Julius* got himſelf made *Dictator* for ten Years, and had *Tribunitian* Power for Life: By which means they got all the Powers of the Commonweal, in effect, into their Hands; all which was confirmed by the *Lex Regia*, of which I ſhall ſay ſomething.

The Power of the Senate and Magiſtrates were weakned in the Civil Wars.

The Emperors, *Julius* and *Auguſtus*, having as Conquerors (rather than by any other Right) got poſſeſſion of the Sovereign Power, after a quieter Settlement, obtained the *Lex*

Of the *Lex Regia.*

Regia to be eſtabliſhed; of which (q) *Juſtinian* ſaith, That what pleaſeth the Prince, hath the vigour of a Law: Foraſmuch as by the *Lex Regia*, which was made concerning his Power, the People to him, and upon him, granted and conferred all its Command and Authority. Therefore whatever the Emperor by his Epiſtle appoints, or knowing decrees, or commands by Edict, that is a Law. In the *Pandects* he mentioneth it almoſt in the ſame Words; and in (r) another place, That by an ancient Law, called *Lex Regia*, all the Right, and all the Power of the *Roman* People was tranſlated into the Emperor's Authority.

(q) *Lib.* 1. *tit.* 2. *Inſtit. Quod Principi placuit, legis habet vigorem: quum lege Regia, quæ de ejus Imperio lata eſt, populus ei, & in eum, omne Imperium ſuum & poteſtatem concedat.*

(r) *Tit. De veteri Jure enucleando.*

Some Civilians, that have lived in Commonwealths and mixed Governments, would gladly evade the force of this, by making the *Hortenſian* Law to give the People and Senate equal Power and Authority, and by the *Lex Regia* the Prince came to be joyned to them as a third Party; ſo that the Powers of neither of the other were by this Law extinguiſhed. But (s) *Vinnius* ſaith, The Words *ei, & in eum*, ſignifie the People to have endeavoured to ſhow their Will to transfer all their Power, Authority, or Command, fully and compleatly on the Emperour. Otherwiſe, How can it be ſaid they grant *omne Imperium & Poteſtatem*, if they retained any of their old Power? Though upon a prudential account, (that the firſt Emperors might not endanger their own Intereſt by too univerſal a Change) they did leave ſome Shadow of Authority to the Senate and People, which *Tacitus* elegantly calls, *Veſtigia morientis Libertatis*, ſome Footſteps of dying Liberty.

(s) *Ad oſtendendam enixam ſuam voluntatem, omne Imperium ſuum* παντελῶς *transferendi. p.* 15. a.

(t) Dr. *Howel* obſerves, That *Juſtinian* declareth, That his Sentence ſtandeth for Law, and bindeth all under his Command; which the very compoſing of the Body of Law, as from him it is tranſmitted to us, ſufficiently demonſtrates: Wherein he by his ſole Authority repealeth what he pleaſeth, and enacteth a-new what ſeemeth good to him, without interpoſition of any other Authority; which he could not have done (nor his Predeceſſors) as to the *Plebiſcita*, and *Senatus Conſulta*, if he had wanted that Power which the People and Senate had, and were deveſted of.

(t) *Lib.* 4. *Hiſt. c.* 1.

The *Roman* Emperours abſolute Authority in making Laws.

Juvenal ſpeaking of the People of *Rome*, how they were fallen from their Power and Authority, and were, under the Emperors, contented to have the Allowances of Corn, and the Pleaſure of Shows in the Cirques, expreſſeth it thus:

——Qui dabat olim
Imperium, Faſces, Legiones, omnia, nunc ſe
Continet, atque duas tantum res anxius optat,
Panem & Circenſes.

In ſtead of all other Authors, (u) *Dio Caſſius* may ſerve to clear this Point, whoſe Diſcourſe on this Subject I ſhall epitomize. He ſpeaking of *Auguſtus*, ſaith, All the Power of People

(u) Οὗτω μὲν ἡ τό τε τῦ δήμυ καὶ τὸ τ γερυσίας κράτος πᾶν εἰς τ' Αυγοῦστον μετέστη. *Lib.* 53.

ple and Senate was transferred upon him, and that all things were managed merely as the Prince pleaſed; though all other Magiſtrates, except the Cenſors, were preſerved: and they had not this Power by Force, but by Law; taking upon them all things which were of greateſt Force (and that by univerſal conſent) as well as the Names; as of Conſuls, *Imperator* (not only as General, but to ſignifie their plenary and abſolute Power) in the Room of King and Dictator: They had the Power of raiſing Men and Money, making War and Peace, commanding all things effectually, both at home and abroad; putting to death *Equites* and Senators, and doing all other things, which a Conſul and other Magiſtrates, who had abſolute Power, might do: They were Cenſors, admitted Perſons into Equeſtrian and Senatorian Ranks, and removed them at their Pleaſure; were inaugurate in all Prieſthoods, and had all Religious and Sacred things in their Hands.

The Power of the *Roman* Emperours.

As to the *Tribunitian* Power, it enabled them to interpoſe againſt any thing that might be done contrary to their Pleaſure, and thereby they were *Sacroſanct*, or Inviolable; ſo that if any injured them in the leaſt, by Word or Deed, they might put him to death, as piacularly criminal.

They have another Priviledge (ſaith the ſame Author) which never was univerſally granted to any *Roman*; for the Emperors are looſed from the Laws, by which thing alone, Liberty is given them to do thoſe things which he hath related, and all other things. (w) He concludes thus, The Commonwealth was changed into a better Form and Order; for it was utterly impoſſible it ſhould ſubſiſt under the Power of the People.

(w) Ἡ μὲν ἓν πολιτεία ἔτω ποτὲ πρὸς τε τὸ βέλτιον καὶ πρὸς τὸ σωτηριώτερον μετεκοσμήθη, καὶ γὰρ τὸς καὶ παντάπασιν ἀδύνατον ἦν δημοκρατουμένους αὖθις σωθῆναι. *Idem.*

From the Conſideration of this State of the Empire, and of abſolute Sovereign Princes, (x) *Bodin* ſaith, it is the firſt and principal part of Majeſty, to command Laws, and impoſe them on all and ſingular the Subjects: and he ſaith, That in the Emperors time, the name of the Senate was inſcribed only to teſtify ſuch Laws were made, and to render them more acceptable to the People, by the opinion they would then have, that they were made with Council and Prudence.

(x) *Leges jubere, & univerſis & ſingulis civibus dare.* De Repub. lib. 1. c. 10. & lib. 3.

So (y) *Ariſtotle* ranks it among the firſt of the *Jura Majeſtatis* to make Laws: for that the Government, ſaith he, is for the moſt part by Laws; therefore they ſhould be in the hand of the Sovereign; for that they have no Power, but as they are inforced by his Authority, who poſſeſſeth the Plenitude of Empire.

(y) *Polit. c.* 11. Law-making the Prerogative of Sovereign Princes.

I ſhall only note a few things of the abſoluteneſs of the *Roman* Emperors, in point of Law-making or abrogating, and ſo paſs to the conſiderations of our Engliſh Monarchy; referring the larger and more explicit treating of it, to the Chapters of Parliaments.

In the Capitol, now *Lateran* Palace, is extant a Table of (z) Braſs, where is to be ſeen a fragment of the *Lex Regia*, renewed

(z) *Gruteri Inſcript. p.* 142. A Fragment of the *Lex Regia* yet extant.

renewed as to *Veſpaſian*, confirming many things of Sovereign and ſole Authority, as deſcending upon him from his Predeceſſors; and enacting, That what he had done, decreed, or commanded before his Ratification, ſhould be held and taken for as good Law, as if the People it ſelf had done, decreed, or commanded it: So that tho' he might make uſe of the Senate or Peoples Ratification; yet his Right was as ſtrong before.

(a) *Tit. De Legibus, lib.* 1.

So (a) *Conſtantine* challengeth to himſelf alone, Authority to judge betwixt Law and Equity; and ſo in point of Repeal of Laws, (b) *Theodoſius* and *Valentinian* ſay, That the Laws were to be abrogated by no other but themſelves.

(b) *Non ab aliis, ſed a ſeſe leges abrogatas fuiſſe.* Lib. 3.

It is not to be doubted, but that great and vaſt Empires require for their better Government, a more abſolute Power in the Sovereign, to make Laws ſuitable to Emergencies, for the Preſervation of the whole. So the Ottoman Empire, and thoſe of *China*, *Perſia*, and the *Mogul*, could not well be conſerved entire without it: Yet in theſe there are eſtabliſhed Laws, agreeable to the Laws of Nature and of Nations; whereby the Rights of *meum* and *tuum* to Strangers, are adjuſted; and the Subjects, though they have no Property like the *Europæans*, yet are kept in Order, and under Protection of the Laws; and their Abſoluteneſs conſiſts principally in the ordering the Execution of any Subject, without Juridical Proceſs; in placing and diſplacing Governours, or depriving Cities, Provinces and Kingdoms of Priviledges.

The happy State of *England*, in the diſpoſing of the Legiſlative Power.

I have enlarged upon this Head, to ſhow how happy we are in *England*; that though the Force and Vigor of all our Laws, flow from our Sovereigns Paternal Care, Peace and Bounty; yet in the Point of making and abrogating Laws, not only Conſultation is had with ſo venerable a Body, as the two Houſes of Parliament are, but nothing is done by the Sovereign, without their own Preparation of Bills, for his Royal Aſſent: A wiſe and wealthy part of which are choſen by our ſelves, and by the Kings Permiſſion, impowered in that particular to act for us, in deliberating upon, and faſhioning ſuch Bills as they petition the Sovereign to grant.

(c) Preface to the Reader, Comp. Hiſtory.

So that what the Judicious (c) Dr. *Brady* (after many other learned Men) aſſerts, is moſt true, That by time and the Conceſſions of our Kings, the Subjects of this Government have and may enjoy all Freedom and Happineſs, that ſober rational Men can deſire; and ſuch as is no where to be found, but in this Iſland, and the Dominions to it belonging; nor can any Man that loves his Prince or Country, wiſh for other than the preſent Conſtitution.

By the whole ſeries of great Councils, in the *Saxon* times, until 49 *Hen.* 3. and the Parliaments ſucceeding, I ſhall make it clear, That the Royal Aſſent is that which forms the Preparatory Bills, preſented by both Houſes, into Laws; and that in ancienter times the Laws were made by the Kings ſole Grant, by way of Charter.

I ſhall here only lay down ſome Preliminaries, to ſhew in general what the ancient Uſage was, referring Particulars to the following Chapters.

Firſt it appears, That there were no certain (*d*) Perſons deſigned by Law, whoſe Concurrence was required to conſtitute a great Council; but the Kings uſed the Advice only of thoſe whom they pleaſed to call unto themſelves; who were always ſuch as they thought moſt able to counſel and direct them in the matters that were to be conſulted of, and whoſe aſſent was moſt likely to add moſt Credit and Eſtimation to the Laws that were to be divulged. So we find in (*e*) *Bede*, that *Segebert* or *Sigbercht*, who was King of the *Eaſt Saxons*, in the time of *Oſwi* King of *Northumberland* (who perſwaded him to become a Chriſtian) held a Council with his *Wites*, *i.e.* Nobles and Wiſemen, and his Friends; and by their Advice, Aid and Conſent, received the Chriſtian Faith.

(*d*) *Sheringham's* Supremacy, *p.* 51. Anciently Kings called whom they pleaſed to adviſe them in making Laws.

(*e*) *Chron. Sax. Anno* 670. *fol.* 516. *And tha hæfde getheal mid his witum, & freondum, & mid heora Teymenyſſe & fultum & gethafunge, Chriſtes geleaffan onfeng.* Bed. Eccl. Hiſt. lib. 3. c. 22.

We find, that *Offa* King of the *Mercians*, made Laws without the Aſſent of his Great Council; for he being at *Rome*, going into the School of the *Engliſh* which was there; out of his Royal Munificence, He gave to the ſupport of the People of his Kingdom, that ſhould come thither, a Penny to be paid yearly for ever, out of every Family, by all, whoſe Goods in the Fields exceeded the value of Thirty Pence; and this he made a perpetual Conſtitution throughout all his Dominions, excepting the Lands conferred upon the Monaſtery of St. *Albans*. This Impoſition and Law continued a long while in force; though we find it not confirmed by any great Council in his own time, or his Succeſſors; only in the Laws of King *Edgar* and King *Edward*, it is enjoyned to be payed as the Kings Alms; which implies it was the Kings Gift ſolely, not by conſent of a great Council.

(*f*) *Mat. Paris vita Offæ, p.* 171. *Hoc autem per totam ſuam ditionem teneri in perpetuum conſtituit.*

So his Son (*g*) *Ecgfrid* grants *Thyreſeld* to St. *Albans*, with the Conſent and Teſtimony of his *Magnates*; which imports it to be granted by Conſent of a Great Council, and the *Optimates* witneſſing are *Cynedrid* the Queen, three Biſhops, one Abbot and *Brorda*, *Wiega*, *Cuthbert*, *Eobing*, *Eſne*, *Cydda*, *Winbert*, *Heardbert* and *Brorda* Dukes; beſides *Ethelbeard* Archbiſhop, *Forthred* Abbat, and *Sighore* Son of *Siger*.

(*g*) *Matt. Paris Auct. additam. fol.* 239, 240.

But I ſhall hereafter more copiouſly give an Account of the conſtituent Parts of the great Councils.

The Legiſlative Power (ſaith a learned (*h*) Author) belongs to the King alone by the Common Law; for though the two Houſes have Authority granted them by the King to aſſent or diſſent; yet the Power that makes it a Law, the Authority that animates it, and makes it differ from a dead Letter, is in the King, who is the Life and Soul of the Law; by whoſe Authority alone the Laws command, forbid, vindicate and puniſh Tranſgreſſors.

The King the Fountain of Laws.

(*h*) *Sheringham's* Supremacy, *p.* 34. *Leges vero Anglicanæ & conſuetudines, Regum Authoritate, jubent quandoque, quandoque vetant, & quandoque vindicant, & puniunt tranſgreſſores.* Bracton, lib. 1. c. 2.

This was reſolved by divers Earls and Barons, and by all the Juſtices in the Reign of King *Edward* the Third; for one

(*i*) *Haedlow*

(i) *Fuit dit que le Roy fist les Leis per assent des Peres, & de la Commune, & non pas les Peres, & le Commune; & qu'il ne avera nul Pere en sa terre demesne, & que le Roy per eux ne doit estre ajuge.* 22 E. 3. c. 1.

(i) *Haedlow* and his Wife, having a Controversie with the King, and desiring to have it decided in Parliament: It was resolved, That the King makes Laws by the Assent of the Lords and Commons; and not the Lords and Commons; and that he could have no Peer in his own Land, and could not be judged by them.

This is further manifested, that the Laws are primarily and properly made by the King; and the two Houses have a Co-operation, but no Co-ordination of Power: for the breach of any Statute, whether it be by Treason, Murther, Felony, Perjury, or by any other way, is an offence against the (k) Kings Authority alone; and Pleas made against such Offences, are called, *The Pleas of the Crown*; because they are done against the Crown and Dignity of the King. So that it is not the Dignity and Authority of the Lords and Commons, which is violated, but the Dignity and Authority of the King.

(k) *Encounter la Corone & Dignitie le Roy.* Stanford's Pleas of the Crown, *lib.* 1. *c.* 1.

This appears also in the Power the (l) King hath in dispensing with such Laws, as forbid a thing which is not *malum in se*, and in pardoning the Transgression of others; as Treason, Felony, *&c.* which in Reason he ought no more to do, than to dispense with the Laws of *Germany*, *Spain* or *France*; or pardon the Transgressors thereof, if they were not made by his Authority.

(l) *Sheringham*, p. 35. See *Finch lib.* 2. *fol.* 22. *Coke* 2 *H.* 7. *lib.* 7. *fol.* 14. *Stanford lib.* 2. 101.

Furthermore it is a certain Maxim of the Law, (m) None can interpret the Laws, but the same Power that makes them: But the King may do this, as appears by the Statute of *Glocester* 681. where, immediately after the Statute, are these words; After by the King and his Justices, certain Expositions were made upon some of the Articles above mentioned: So the Judges are appointed by the King, and they have from him a Power to interpret the Law *judicialiter*; otherwise they could not proceed to Judgment; and being called by the King, with him, and under him, they have a Power to interpret the Law *Authoritativé*.

(m) *Ejusdem est leges interpretari, cujus est condere.*

The Amendment was sealed by the Great Seal, 2 *May*, 9 *E.* 1. commanding the Justices to do and execute all and every thing contained in it, though the same did not accord with the Statute of *Glocester* in all things.

But the two Houses (besides, that they can do nothing singly or joyntly, without the Kings Concurrence) in (n) their make and composition, are unfit to interpret Law: For such Power as interprets Law, must be always existent, or in being, to act according to emergent Occasions; which the two Houses are not: And if they were a permanent Body, yet they having a Negative upon each other, the Interpretation of the Law must be retarded, and all Controversies depending thereupon undecided: And this Disagreement might perhaps endure for ever; and so, a final Determination in such Suits would be impossible. Now these are Inconveniences which ought not to be admitted in any Commonwealth; for it derogates both from the Honour and Wisdom of a Nation, to be so moulded and framed, that Justice cannot have a free Passage in all Contingencies.

(n) *Sheringham ut supra.*

Not

Not only the Legiſlative Power it ſelf, but the very (*o*) Exerciſe of the Power alſo (ſo far as it is eſſential to Government) is in the King alone; for he can by Edicts and Proclamations provide for all neceſſary occaſions, and ſpecial Emergencies, not provided for by fixed Laws, which is one of the moſt excellent and eminent Acts of the Legiſlative Power, and a ſufficient Remedy againſt all Miſchiefs, in caſe the two Houſes ſhould refuſe to concurr with him in thoſe things which concern the Benefit of the Kingdoms.

(*o*) *Idem, p.* 36. The King may provide for all things neceſſary for Government, where the Law hath not provided, or contradicts not.

For as (*p*) *Bracton* ſaith, thoſe things which belong to Jurisdiction and Peace, and thoſe which are annexed to Juſtice and Peace, appertain to none but the Crown, neither can they be ſeparated from it, becauſe they make the Crown. If the King ſhould unwarily by Act of Parliament conſent to any thing prejudicial and derogatory to His Royal Prerogative, ſuch Acts are void by the Common Law, and the Judges are bound to declare them ſo; as that of 23. *H.* 6. about Sheriffs, not to continue longer than one Year, was by the Judges declared void, and all Kings ſince, might with a Clauſe of *non obſtante*, againſt the manifeſt words of the Statute, have granted that office for Life, in Tail, or in Fee.

(*p*) *Ea quæ Juriſdictionis ſunt, & pacis, & ea quæ ſunt Juſtitiæ & paci annexa, ad nullum pertinent niſi ad Coronam & Dignitatem Regiam.* Bracton lib. 2. c. 24.

But I need not enlarge upon this, for all the Acts for the King's Supremacy, all the Laws and Statutes that ever were made, put this beyond Diſpute, that the affirmative Voice is abſolutely in the King; that no Laws can be binding, or be Laws at all, without his ſpecial Conſent: and this being one of the great Rights of Sovereignty, cannot be ſeparated from the Perſon of the King, although he (*q*) would himſelf: For it is eſſential to Majeſty and Soveraignty, and cannot be abdicated while he remaineth King, nor ſeparated without the diminution or deſtruction of Majeſty. How both King and People are obliged to defend the Rights of the Crown, will appear in the Laws aſcribed to King *Edward* the Confeſſor, in the 17. 35. and 56.

(*q*) *Suprema juriſdictio & poteſtas Regia etſi Princeps volet, ſeparari non poſſunt; ſunt enim ipſa forma & ſubſtantialis eſſentia Majeſtatis, ergo manente ipſo Rege, ab eo abdicari non poſſunt.* Cabedo Pract. Obſ. par. 2. deciſ. 40.

As to the Particular, How abſolutely neceſſary the Royal Aſſent is to all Laws, in the Act of Recognition to King *James* the Firſt, it is fully expreſſed thus: Which if Your Majeſty ſhall be pleaſed (as an Argument of your Gracious acceptation) to adorn with Your Majeſtie's Royal Aſſent, without which it can neither be Compleat, and Perfect, nor remain to all Poſterity according to our Deſire, as a Memorial of your Princely and tender Affection towards us, *&c.*

Againſt what I have laid down, thoſe who were for co-ordinate Powers in the two Houſes, object many things; ſome I have anſwered in the Chapter of the King's Sovereignty, and I ſhall meet with others in the Chapters of Parliaments: And ſhall here only take notice of ſome omitted, or not fully anſwered there.

Anſwers to ſome Objections againſt the King's ſole eſtabliſhing of Laws.

Againſt the aſſertion, That the Liberties granted by King *Henry* the Third, were by way of Charter; they produce the Preamble (*r*) to the Confirmation of King *Edward* the Firſt, of

(*r*) *Coke 2 Inſtit. fol.* 525.

La Charte des Franchiſes, & la Charte de la Foreſt, les queux fuerent faitz per Commen de tout Royalm, en le temps le Roy Henry pier, ſoient tenue, &c.

Magna Charta, and *Charta de Foreſta*, wherein he ſaith that the Charter of Liberties, and the Charter of the Foreſt, made by the Community of all the Realm, in the time of King *Henry* our Father, ſhall be kept, *&c.*

(s) General Preface to Compleat Hiſtory, *p.* 41.

The ancient Kings ſealing of Charters of Liberties, reputed Laws.

To which, with the Judicious Doctor (*s*) *Brady*, may be anſwered that theſe were the Petitions and Requeſts of the Community of the Kingdom, and may be ſaid to be made, that is, digeſted by them into the form of a Charter. So the Barons offered King *John*'s *Magna Charta* to him ready drawn in a Schedule, and forced him to grant it, and cauſe his Seal to be put to it; and the whole ſtrength and validity of the Charter lay in his Grant, and the Confirmation of it under his Seal. This was the only Security they deſired, and demanded no other, and the Tenour of all the Charters were accordingly, We grant, We confirm, We give for us and our Heirs, to them and their Heirs, *&c.* Which Grants and Conceſſions were always in theſe times accepted, and acknowledged to be ſufficient, without the leaſt doubting or ſcruple, There was no other Power or Authority that gave them being but the King's; ſo that it ſeemed the great Councils or Parliaments of thoſe times, owned the Kings Charters under Seal, and the Grants made by them to the People, to be of good force and effect, and that their Petitions, to which he gave his aſſent, and cauſed to be put under his Seal, were by them accepted, and from time to time acknowledged as firm and valid Laws.

(t) *Idem*, *p.* 67.

The Laws planted by Kings.

The ſame learned (*t*) Doctor *Brady* obſerves that Sir *Edward Coke* hath a formal way of ſpeaking, The Law doth this, and, The Law doth that, This is Law, That is by Common Law of *England*, abſtracting it from any dependance upon, or Creation by the Government; as if it had been here before there was any, and had grown up with the firſt Trees, Herbs, and Graſs that grew upon *Engliſh* Ground, and had not been of our antient Kings and their Succeſſors planting, by aſſiſtance and advice of their great Councils in all Ages, as it was found expedient either by them, or upon Petition and Requeſt of their People; which is acknowledged by all the Biſhops, Earls, Barons, and People preſent at the (*u*) Coronation of King *Edward* the Second, in theſe words: Sir, Will you grant and keep, and by your Oath confirm to the People of *England*, the Laws and Cuſtoms granted to them by the antient Kings of *England*, your Predeceſſors, true and devout to God, and namely the Laws and Cuſtoms and Liberties granted to the Clergy and People, by the glorious King *Edward* your Predeceſſor?

(u) *Clauſ.* 1 *E.* 2. *m.* 10. *dorſo.*

Second Objection.

Another Objection ſome make againſt the Abſoluteneſs of the King's Power, when it is ſaid in antient Statutes, *The King ordains*, *The King wills*, that it hath been reſolved by many of the Judges, (*w*) that if theſe Statutes be entred in the Parliament Rolls, and allowed as acts of Parliament, it ſhall be intended they were by Authority of Parliament.

(w) *Coke* 8. *Report. f.* 20. *b.*

With

With the Judicious Dr. *Brady* I ſhall not enquire how ſuch Entry and ſuch Allowance (without any Words in the Statutes to that purpoſe) can make them to be by Authority of Parliament. But we may be ſure, thoſe Words, *The King ordains, The King wills*, being pronounced in Parliament, and recorded in the Rolls thereof, do clearly prove the King's Authority and Power in making Laws, to be far greater than many Men would allow him, or have him to enjoy.

(*x*) *Bracton*, and the Author of (*y*) *Fleta*, applying the Paſſage of the Civil Law, *Quod Principi placet, Legis habet vigorem*, to the King of *England*, ſay, That Clauſe ought not to be underſtood of every thing that is raſhly preſumed to be his Will, but of that which is juſtly determined upon good Advice and Deliberation, by the Counſel of his Magiſtrates, (*z*) the King giving it Authority, and confirming it for a Law; and from hence (*a*) infer, That when he himſelf is the Author of the Law, Injuſtice ought not to ſpring from the ſame Fountain from whence the Law doth ſpring.

(*x*) *Lib.* 3. *c.* 9.
(*y*) *Lib.* 1. *c.* 17.
(*z*) *Rege Authoritatem præſtante.*
(*a*) *Cum ipſe ſit Author Juris, non debet inde Injuriarum naſci occaſio, unde Jura naſcuntur.*

It is no diminution of the Sovereignty of a Prince, in the matter of making Laws, or repealing them, to have the Aſſent of the Nobles, and ſuch a ſelect Body of Great and Wiſe Men as the Houſe of Commons are. But when (as in the Parliament 1641.) the Two Houſes claim a Co-ordinate Power, and would make their Advices be ſwallowed as Commands, it is this that all Loyal Perſons ſhould oppoſe.

We generally underſtand, that the *Perſian* Monarchy was as Abſolute as any; yet in it we have a manifeſt Diſcovery of the Concurrence of the Nobles in preparing a Decree; yet they wanted the King's eſtabliſhing the Decree, by his ſigning it, whereby it might not be changed: and *Grotius* thinks they ſigned it alſo. (*b*) The Words are, *The Preſidents and Princes aſſembled together to the King, and told him, That all the Preſidents of the Kingdom, the Governours and the Princes, the Counſellors and the Captains, have conſulted together to eſtabliſh a Royal Statute, and to make a firm Decree, &c. Now, O King, eſtabliſh the Decree, and ſign the Writing, that it be not changed, according to the Law of the Medes and Perſians, which altereth not.* Here the Preſidents, *&c.* aſſembled, conſult about the Decree, they propoſe it as they had framed it; yet they own, it was of no force without the King's eſtabliſhing and ſigning it: Which is exactly parallel with the Conſtitution of the Legiſlative in *England*, if we joyn the Commoners to the Preſidents, Princes, *&c.*

The *Perſian* manner of making Laws.
(*b*) *Dan. cap.* 6. *v.* 7, 8, 9.

But the Writers for the Long Parliament, were ſo deſirous to make the Two Houſes to have a Radical Mixture of the Legiſlative Power equal with the King's, that they ſought all the ſpecious and plauſible Arguments they could, to enforce it, having little regard to what was Law it ſelf, or ancient Uſage. Therefore one of them, in his (*c*) Anſwer to Dr. *Fern*, ſaith, A Legiſlative Power is not to be ſatisfied by a bare powerleſs Conſent; and therefore demands, Whether that Conſent be cauſal and authoritative,

No radical mixture of Power in the two Houſes with the King.
(*c*) *Pag.* 39.
Third Objection.

ritative, or meerly conſiliary and unauthoritative? That the Two Houſes have an Enacting Authority, he would prove from that Clauſe ſet in the beginning of Acts, *Be it Enacted* by the King's moſt Excellent Majeſty, and the Authority of the Lords and Commons aſſembled in Parliament: For, he ſaith, this implies diſtinct Authorities; for the Addition of the Authority of the Lords and Commons were ſuperfluous, if Laws be enacted by the King's Authority alone.

This will appear a Form of Words lately made uſe of, in the Twenty fourth Chapter.

(d) King's Supremacy, *p.* 89.

To which it may replied, according to (*d*) Mr. *Sheringham*, That though it be granted, that they have an Enacting Authority in this particular of Law-making, (which how ſtep by ſtep it hath been brought to the ſtate it is now in, will be cleared in the following Chapters) yet the Queſtion is, firſt, Whether that be only a Power of aſſenting, that ſuch or ſuch a Law ſhall be eſtabliſhed; or a Power that commandeth and giveth life and vigour to the Laws? Secondly, Whether the Power be radically in themſelves, or derived from the King?

(e) 2 *H.*7. 14. 11 *H.* 7. 25. *Lambard Archeion, fol.* 271.

As to the firſt, It is agreed by the Judges, (*e*) That the Words *Aſſenteth* and *Enacteth* are equivalent in this Caſe: For their Power of preparing Materials for a Law, by framing Bills, ſufficiently denotes their Aſſent, becauſe they are Bills of their own framing; and the Wiſdom they ſhow in theſe, and the Care of the Government and People, will always make that Auguſt Body of great uſe to the Government, and valuable by their Fellow-ſubjects.

In this Particular the Writ of Summons is that which gives them all the Power, of which in the Chapter of Parliaments I ſhall enlarge.

But ſecondly, It muſt be conſidered from whom they have this Authority. They have the Uſe and Exerciſe of the Legiſlative Power, ſo far as is neceſſary for that Act, although it be not radically in them: for although the King's Authority cannot be ſeparated from him *privativè*, ſo as to deprive him of it; yet *cumulativè* it may be inherent in his own Perſon, and yet be in others too; as the Light of the Sun is inherent in its own Body, and yet diffuſed through the whole World: And ſo we call it Moon-ſhine, and Star-light, when all their Lights are from the Sun. And this Delegate Authority may be called theirs, becauſe for the time of their Sitting they are by the Sovereign and Conſtitution of Government ſo capacitated to act: But ſince they are called by the King's Writ, and diſſolved at his Pleaſure, they cannot be ſaid to have the Power radically in themſelves.

(f) 24 *H.*8. 1 *E.6.* 6. 2.

If this radical Power in the Two Houſes were true, How could the (*f*) Statutes declare the King to have entire, whole, and plenary Power, and to be ſo Supreme, that all Authority is derived from him, and all Obedience and Allegiance due to him, and him alone? An utmoſt Chiefty and Primity of Share (as they uſed to ſpeak in 1641.) will not make out the Force of the Statutes.

Becauſe the Kings of *England* deſiring to rule their People by Lenity, have out of Princely Clemency condeſcended ſo far, as not to impoſe upon them (as hereafter it will appear they

they anciently did) any new Law, or alter and repeal the old, without their own Conſents, by their Repreſentatives: The Black Parliament of 1641. would have the People believe, that their Authority was equal with the King's: But when Succeſs had hardned them, they were not content with a ſhare, they at firſt challenged, but laid claim to all; wholly excluding the King, and denying him his Negative Voice; uſurping and taking upon them the whole Power of making Laws: So that this Serpent of Co-ordinate Power is not to be ſuffered to wrigle in its Head, leſt the whole Body glide eaſily after.

The Encroachments of the Black Parliament.

But I leave the further diſcourſe of this to its proper Place, and ſhall now proceed to give ſome Light to the Government the *Britans* had among them, by the Compariſon is found betwixt them, the *Gauls* and *Germans*: Being deſirous, as much as I can, to ſhow the Ancienteſt uſages, and under the ſeveral Conqueſts of *England*; how the Government hath received Growth and Alteration (ſometimes the People being under the Slavery of abſolute Conquerors, and other times factious Nobles bearding their Kings) how the even Thred of Regular Government hath been carried on or interrupted; how from an abſolute Power of giving Law, and ruling in a Military way, by the Feudal Law, and many other particulars, the Government is brought to that Temperament, whereby the Subjects may, if they will be dutiful, live happilier than any other do.

Preface to the following Chapters.

To illuſtrate all theſe, it will be neceſſary to repreſent the State of the *Britans* under the *Romans*, and to diſcourſe of the *Germans*, from whence our *Saxon* Anceſtors came; and of both of their Manners and Laws, and from thence to proceed to illuſtrate the Legiſlative Power: In all which, if I carry my Reader out of his Country, to view the State of our Ancient Neighbours; I hope he will think it no ill ſpent time, to make that pleaſing as well as profitable towr: And though I repreſent him his Anceſtors rude and barbarous in Compariſon of the *Roman* civilizedneſs; yet he will find they had ſome Religion, ſome Arts, great and generous Souls, as well as ſtrong Bodies; and their greateſt miſ-hap ſeems to be, that thoſe in *Britan*, *Gaul* or *Germany*, were not under one Monarchy, but divided into Multitudes of little Kingdoms: which made *Tacitus* obſerve, That there was nothing more profitable to the *Romans*, againſt the moſt puiſſant and valiant Nations, than that they adviſed not in common.

Nec aliud adverſus validiſſimas Gentes pro nobis utilius quam quod in commune non conſulunt. Vita Agricolæ, p. 308.

CHAP.

CHAP. XXII.

Of the Government of the Britans, *and the* Romans *impoſing their Laws upon them.*

Antiquity of *Engliſh* Cuſtoms.

(a) *Regnum illud eiſdem quibus jam regitur conſuetudinibus continue regulatum fuit.* De laudibus LL. Angliæ, c. 17.

CHancellor (a) *Forteſcue* affirms, That in all the times of the *Britans*, *Saxons*, *Danes* and *Normans*, and of their Kings, this Realm was ruled with the ſelf ſame Cuſtoms, that it is now governed withal; which, he ſaith, if they had not been right good, ſome of thoſe Kings, moved either with Juſtice, with Reaſon or Affection, would have changed them, or elſe altogether have aboliſhed them, and eſpecially the *Romans*, who did judge all the reſt of the World by their own Laws.

(b) Epiſtle to the ſixth Book of Reports.

(c) Proem to 2. *Inſtit. fol.* 1. and 2. *Inſtit. fol.* 3.

So Sir *Edward Coke* (b) ſaith, the common Law of *England* was here before the Entry of the *Romans*, *Saxons*, *Danes* and *Normans*; and it was never altered by any of them; and ſo he (c) makes *Magna Charta* Declaratory of the principal Grounds of the fundamental Laws of *England*, and for the reſidue, that it is additional to ſupply ſome Defects of the Common Law, and was no new Declaration.

(d) *Leges moribus receptæ majoris ſunt Autoritatis quam leges ſcriptæ.* Ariſt. Polit. lib. 3. c. 12.

So Sir *John Davis*, in his Preface to the (d) *Iriſh Reports*, magnifies the Common Law as *Jus non ſcriptum*, better than all the written Laws in the World; excelling Parliament Laws, which are written; coming neareſt to the Law of Nature, which is the Root and Touchſtone of all good Laws.

When I read theſe Aſſertions, I think it had been incumbent upon theſe learned Men to have deduced (as far as they could by Hiſtory) ſome Teſtimonies of Ancient Writers, to have confirmed their Poſitions: But in none of them do we find the leaſt offer of a Proof for what they ſay.

The Benefit to have our Common Laws and Cuſtoms aſcertained and compared with all Ancient Laws.

I think it would be a very commendable Work, and very pleaſant to all ingenious Perſons; if ſome of the Long Robe would digeſt into Heads, that which is owned as the Common Law. For though Sir *John Davis* calls it unwritten, and which had its beginning beyond the Memory of any Man living; and that a Cuſtom tryed and approved, time out of mind, doth become a Law to bind the People; yet nothing can hinder, but whatever is preſerved in the Memory of Men living, and owned as cuſtom, may be committed to writing: Now I would not only deſire it might be ſo written and publiſhed, but that ſome judicious Lawyer (who was likewiſe well verſed in Hiſtory and Antiquities) would ſearch out for ſome parallel written Laws among the *Græcians* and *Romans*, as alſo compare all the *Saxon* Laws we have, the Laws of the *Lombards*, *Boiarian*, *Ripuarian*, and other Laws, and then I doubt not but they would acquire a greater Veneration in the World; and it would be known whether the Opinions of the learned Chancellor and

Lord

Lord Chief Juſtice, were to be relied upon as to the Antiquity of them before the *Roman* time.

The Glory of his Profeſſion, and of our Nation (as to that learning he was verſed in, which was not ſmall) I mean (e) Mr. *Selden*, hath given the beſt Solution to this point of the Antiquity of our Cuſtoms and Common Law, that I have yet met with; which I ſhall abſtract in as ſummary a way as I can.

(e) Notes upon *Forteſcue*, *p.* 14. *ad* 22.

Firſt he ſaith, The Opinion of the Antiquity of our Common Law, before the Civil, is founded upon the Story of *Brute* (of which the Chancellor ſpeaks in his Thirteenth Chapter) and that Story ſuppoſing him to be here more than three Hundred Years before *Rome* was built, makes the Chancellor conclude our Common Law ſo Ancient; but ſuppoſing there were ſome Truth in that Fiction, how can the Chancellor be certain, that the ſame kind of Law and Policy hath ever ſince continued; unleſs an Oral Tradition may here find as great reſpect, as it hath with ſome in ſpiritual matters.

Therefore with Mr. *Selden* we may judge all Laws in general, originally to be equally Ancient, as being grounded upon Nature, every Nation taking the grounds of their Laws from it; and Nature being the ſame in all, the beginning of all Laws muſt be the ſame: Even from the firſt Peopling of the Land, when Men (by Nature, being civil and ſociable Creatures) grew to plant common Society and, I may add, when they being under the Government of a Prince, received Laws by his Appointment, extracted out of the Laws of Nature, the Neceſſity of Government, and the Conveniences of the People, we may date National Laws. Now though the Law of Nature be truly ſaid to be immutable, yet it's as true, that it's limitable, and the limited Law of Nature is that now uſed in every State; for the divers Opinions of Interpreters, proceeding from the weakneſs of Mans Reaſon, and the ſeveral conveniences of divers States, have made thoſe different Limitations, which the Law of Nature hath ſuffered: It falls out, that in ſeveral Nations they are ſo diſguiſed by the various Modifyings and Repairs, that as to their firſt being, they are like (f) *Jaſon*'s Ship, that had nothing of the old Materials remaining.

The Antiquity of all Laws.

(f) *Ubi nihil ex priſtina materia ſuperſit.*

Therefore the learned *Selden* adds, That little follows in point of Honour or Excellency, ſpecially to be attributed to the Laws of a Nation in general, by any Argument drawn from the difference of Antiquity, which in ſubſtance is alike in all: for as ſoon as *Italy* was peopled, this beginning of Laws was there; and ſo when there was firſt a State in that Land which the Common Law now governs, there were natural Laws limited for the Convenience of civil Society here.

Notwithſtanding the Opinion of the (g) Chancellor, that neither the *Roman* Civil Laws, nor the Laws of the *Venetians*, which above all other, he ſaith, are reported to be of moſt Antiquity,

(g) *De laudibus LL. Angliæ*, *c.* 17.

tiquity, nor the Laws of any *Paynim* Nation of the World, are of ſo old and antient Years as the Cuſtoms or Common-Law of *England*, and that they have weathered out the changes and overthrow of People by the *Romans*, *Saxons*, *Danes* and *Normans*: Yet I cannot believe but every of thoſe Nations, when they obtained the Power of Government, introduced their own Laws, and aboliſhed what they found not agreeable to their own Politie.

Whence to learn the Manners or Government of the *Britans*.

As to the *Britiſh* Laws, before the *Romans* Arrival, we can find very little of them, but what is related of the *Druids*. *Peter Ramus* in his Book *de moribus Veterum Gallorum*, hath Collected out of the antienteſt Authors, a parallel betwixt the Cuſtoms of the *Gauls*, the *Germans*, and *Britans*, there being found in *Cæſar* and *Strabo*'s deſcription of their manner of Living, ſtrength of Body, Temperance, Marriages, Habitations, and many other Particulars, a great affinity, of which I ſhall touch ſome Particulars hereafter. At preſent I ſhall ſpeak of the original of the *Gauls*, and of the *Druids* Diſcipline, and Government of the *Gauls*, and *Britans*.

The fabulous *Beroſus*, publiſhed by *John Annius* of *Viterbium*, a City in *Tuſcany*, ſaith, that *Dis* or *Pluto* was the Founder of the *Celtick* Colonies. *Celto Gallatia* comprehended what was within the River *Rhine*, the *Alpes*, the *Mediterranean* Sea, the *Pyrenean* Hills, *Gaſcoign* and the *Brittiſh* Ocean, and *Ptolomy* (*h*) comprized all *Europe* under the name of *Celtica*. This *Beroſus* calls this *Dis Samothes*, and makes him Son of *Japhet*. *Cæſar* countenanceth that of *Dis*, from whence he ſaith they reckon by Nights.

(*h*) 2. *Geog.* & 2. *Quadrip.* & *Pauſan. l.* 1.

The beſt Authority we have for the *Samnothei* is that of *Laertius*, (*i*) who ſaith, that amongſt the *Celtæ* and *Gauls* the *Semnothei* (as ſaith *Ariſtotle* in his Book of *Magick*, and *Sotion* in his Twenty third Book of Succeſſion) were. But there is no mention of their being skilled in Laws, Divine and Humane, as the fabulous *Beroſus* ſaith. Here *Stephen* in his notes upon *Laertius* thinks them to be called *Semnothei*, for having the worſhipful Gods, Οἱ Σεμνοὶ Θεοὶ, in their Mouths, or that they themſelves were accounted amongſt Men as a kind of worſhipful Gods. (*k*) So in *Pauſanias* we meet with the Chappels of the Goddeſſes, whom the *Athenians* ſtiled Σεμνὰς, that is Worſhipful.

(*i*) *In vitis Philoſ.*

(*k*) *In Achaicis.*

Ramus (*l*) out of *Beroſus*, ſaith, Philoſophy proceeded in the beginning from the *Semnothei* of the *Gaules*, and that *Magus* ſucceded him, then *Sarſon* their third King, who, ſaith *Stephanus Forcatulus*, reduced the Laws of his Grandfather and Father into one Volume, and with ſevere Threats gave order for the keeping of them: and *Ramus* ſaith, he was the firſt that appointed the Study of Learning. Their fourth King he makes *Druis* or *Druidus*, from whence the *Druids* (of whom I ſhall hereafter diſcourſe) and their fifth *Bardus*, whoſe Glory is celebrated by the Bards, their Poets and Orators.

(*l*) *De moribus veterum Gallorum, p.* 71, 72.

De Gall. Imp. lib. 1.

(*m*) *Mar-*

(*m*) *Marcellinus*, out of *Timagenes*, makes the *Aborigines* of *Gaul* to be the *Celtæ*, and ſome part of them to be Peopled by the *Dorienſes*, who followed the elder *Hercules*, and poſſeſſed the Ocean Shore. So *Marſeilles* a City of *France*, was a *Greek* Colony of the *Phocians*. The *Draſidæ* were another part of the *Indigenæ* or home-bred People, and others, ſaith he, have flowed hither from the remote Iſles, and from the tract of Land beyond the *Rhine*, and ſome few after the Deſtruction of *Troy*, flying from the *Grecians*, being every where diſperſed, ſeated themſelves in the empty Countries. Where we may note by the by, that then the Opinion of the *Trojans* ſetling in ſeveral Countries, was believed. But *Marcellinus* ſaith, the Inhabitants do affirm (which he had alſo ſeen cut in their Monuments) that *Hercules* the Son of *Amphitrio*, having overcome *Geryon* the cruel Tyrant of *Spain*, and *Turiſcus* of the *Gauls*, begot upon their noble Women ſeveral Sons, and called them by the names of the Countries they commanded. Alſo that ſome came from *Phocæa* in *Aſia*, flying the cruelty of *Harpalus* the Preſident of *Cyrus*.

(*m*) *Lib.* 15. *De Origine Gallorum.*

Q. Whether he meant *Britain* and *Ireland.*

Quod etiam nos legimus in monumentis inciſum.

I am larger upon this Matter, becauſe the *Britains* had the Doctrine and Diſcipline of the *Druids* in Perfection, as hereafter I ſhall ſhew, and we find in *Cæſar* a great part of *Britany*, once under the Government of *Divitiacus*, King of the *Soiſſons*, a People of *France*, and often the cuſtoms of the *Gauls*, *Britains*, and *Germans* are compared, or their Manners are near a-kin, as appears by *Cæſar*, *Tacitus*, *Strabo*, and others.

Concerning the Laws of *Samothes*, we find nothing in ancient Authors; for that of *Baſingſtoke*, (*n*) Count *Palatin* is but a very modern Authority, that *Samothes* defined the Spaces or Intervals of all time, not by the number of Days, but of Nights, and he obſerved Birth-days, and the Commencements of Months and Years in that order, that the Day ſhould come after the Night. Only I cannot but obſerve that both *Cæſar* ſaith the ſame thing of the *Gauls*, and *Tacitus*, of the *Germans*, and the *Britains* do yet obſerve it: So we call the ſeventh Night for the ſeventh Day in our uſual Speech, ſuch or ſuch a day Senight; which is agreeable to Nature and Scripture, where we find the Evening and the Morning were the firſt Day: and ſo *Ariſtotle* reckons *Privation* as the firſt of the three Principles.

(*n*) *Seldeni Fanus Ang. c.* 3.

I paſs by the reſt of the Story of *Phranicus*, who about nine hundred years after *Samothes* (if we will believe *Jeofrey* of *Monmouth*) being to reſide in *Pannonia*, intruſts the *Druids* with the Government of *Britain*, and how *Brutus* the Grand-Child of *Æneas*, got the Kingdom; and about ſix Hundred Years after, *Dunwallo Molmatius* being King, made Laws, according to our *Jeofery* and *Ralph* Monk of *Cheſter*, that their Ploughs, Temples, and Roads, that led to Cities, ſhould have Priviledge to be places of Refuge, and many other things which *Gildas* mentions, and *Polydore Virgil* hath gathered, and how he was

buried in *Troynovant*, near the Temple of Concord, which (*o*) *Norden* will have to be the Temple of *London*. All these wanting the Confirmation of sound Authority, as also doth the whole Series of *Brittish* Kings, and the Title of the *Trojan* Laws that *Brutus* brought in; for there is but one specially mentioned, that the Eldest Son should inherit the whole Right and Estate of their deceased Father. This indeed might be taken from *Herodotus* (*p*) that writes it of *Hector*, Son and Heir of *Priamus*, and this (if we believe the *Brittish* Story) was sometimes broken, as when the three Brothers, *Locrinus*, *Camber*, and *Albanactus* divided the Land betwixt them, as also the Shares that *Fenix*, and *Porrix*, *Brennus* and *Belinus* had.

(*o*) *Britanniæ Speculum.*

(*p*) *In Euterpe.*

It is no wonder that we have no better account of those Ages, since we find in (*q*) *Cæsar*, That the *Druids* committed not their Learning to Writing, but taught a certain number of Verses, and some spent twenty Years in the Discipline: and (*r*) *Tacitus* notes of the *German* Priests, that though they were ignorant of the secret of Letters, yet in ancient Verses, they celebrated their Gods and Kings, and that alone was with them their Memorials and Annals.

(*q*) *Neque fas esse existimant ea literis mandare, cum in reliquis fere rebus publicis privatisque rationibus Græcis literis utantur.*

(*r*) *Quamvis literarum secreta ignoraverint, attamen celebrabant carminibus Antiquos suos Deos & Reges; Idque unum apud illos memoriæ & Annalium genus erat.*

It is true, *Cæsar* (*s*) saith, that though the *Gauls* did not think meet to commit their Doctrine to Writing, yet generally in all other things, whether publick affairs, or private accompts, they made use of *Greek* Letters: and he saith, That there were Tablets found in the Camp of the *Switzers*, made up of *Greek* Letters. Yet it doth not appear that the *Greek* Language was used by the People: for one and the same Character of Letters may serve to express different Languages; so the *Targum* or Chaldee Paraphrase, and the new Testament in *Syriack* are done in *Hebrew* Letters, yet the Language very different.

(*s*) *Lib.* 1. *De Bello Gallico.*

That the *Greek* Language was not known among them, appears by what (*t*) *Cæsar* saith, That being to write to *Quintus Cicero*, who was then besieged in *Flanders*; by great Rewards prevailed with an Horseman of *Gaul*, belonging to the *Nervians*, to carry a Letter to him, which he writ in *Greek*, lest it being intercepted, the Enemy should discover the design.

(*t*) *De Bello Gallico, lib.* 5.

Peter Ramus (*u*) is so desirous to promote the Glory of his Country, that he offers considerable Authority to prove, that the *Grecians* learnt their Letters from the *Gauls*, affirming that the Learning of *Semnothei*, *Saronidæ*, *Druids* and *Gauls* flourished in *Gaul* many Ages before *Cadmus* came into *Greece*; and the great (*w*) *Selden* seems to allow it, when he saith, That Learned Men do think the *Greeks* took the *Gallick* ones for their Copy, after the *Phœnician* Letters, which were not altogether unlike the *Hebrew*, were grown out of use.

(*u*) *De moribus veterum Gallorum, p.* 74.

(*w*) *Fanus Anglorum, cap.* 9.

He further adds, That the rude *Gothic* Characters, which (*x*) *Bonaventure Vulcanius* of *Burges* published, do very much resemble the *Greek* ones, as also the present *Russian* Characters. As to the *Latin* Letters, they were first brought over into *Italy* from *Arcadia*, with *Nicostrata* the Mother of *Evander*, who was banished his Country.

(*x*) *In Appendice ad Jornandi Goth.*

As

As to the *Druids* we ſhould have been at a great loſs, both concerning their Doctrines, and of the Manners and Cuſtoms of the *Gauls*, *Britains* and *Germans*, if we had loſt the Hiſtories of *Julius Cæſar*, *Pliny*, *Strabo*, and ſome more after them, ſince the Memorials and *Epinicia* of the Bards, are ſo totally loſt, that we have nothing remains of them, but *ſumus Troes*, and that of (*y*) *Lucan.*

(*y*) 1. *Pharſal.*

Laudibus in longum, Vates, demittitis Ævum,
Plurima ſecuri fudiſtis Carmina Bardi.

The *Welſh Bards* glory, that they ſtill retain the Memorials of their great Men, and eſpecially their Kings; but we may eaſily conceive, that the great Mixture of Poetical fancy (as even in *Homer* and *Virgil* is found) muſt render the whole very *Romantic.*

Cæſar ſaith, That in *Gaul* there are only two ſorts of Men, who are in any Honour or Account, *viz.* The *Druids* and the *Equites*, of whom I ſhall treat, and firſt of the *Druids*; and having after occaſion to mention ſeveral particulars, upon emergent occaſions, I ſhall in a ſummary way here collect what diſperſedly is recorded by him, not only concerning the *Druids* Doctrine, Religious and Civil, but of the Government or Polity, and laſtly of the manner of Living, Cuſtoms and Uſages of the *Gauls*, *Germans* and *Britains*: towards the better underſtanding of which I think fit to note theſe things.

Firſt, as to their Name, we may not rely upon the Authority of *Beroſus* from their King *Druis*: As to the word Δρῦς an Oak, which was ſacred to them, I ſhall ſpeak hereafter, only at preſent noting that *Pliny* ſaith, They performed none of their Devotions without Oaken Leaves. *Goropius* (*z*) *Becanus* would have it from the *Dutch* True-wiſe, or from *Trutin* a word, which with the Ancient *Germans* ſignified God, and ſometimes Lord; as * *Merula* notes out of the Goſpel of *Othfred.* Now as to their learning I ſhall ſay ſomething; *Cæſar* ſaith, They were Profeſſors of all learning; and (*a*) *Ramus* divides it into their ſacred learning, their Philoſophy, Aſtronomy, Coſmography, Muſic, *&c.* who may be conſulted by the curious Readers. As to their Religious Doctrine and Concerns, what follows is obſervable.

(*z*) *In Gall.*

* *Coſmog. par.* 2. *l.* 3.

(*a*) *De moribus vet. Gallorum, p.* 81. *ad* 95.

Firſt, They taught the Immortality of the Soul, as (*b*) *Cæſar* tells us, by which they excited greatly all Perſons to Vertue, and to neglect the fear of Death. Since the learned *Selden* will not undertake to judge, whether the *Druids* had their *Metempſychoſis* or Transmigration of Souls from *Pythagoras*, or he from them, as (*c*) *Lipſius* alſo queries, I ſhall not enter into diſpute: for ſome make (*d*) *Pythagoras* only in *Tarquin*'s time; and thoſe that ſpeak of his greateſt Antiquity, place him with *Numa*; whereas moſt make the *Druids* of the Ancienteſt ſtanding among the Philoſophers of the *Gentiles.*

(*b*) *Hoc volunt perſuadere non interire animas, ſed ab aliis poſt mortem ad alios tranſire.* De Bello Gallico, lib. 6.

(*c*) *Stoic. Phyſiologia. lib.* 3. *diſſert.* 12.

(*d*) *Vide Laert. lib.* 8. *Plut. Orat.* 2. *de eſu Carnium.* *Reuchl. lib.* 2. *de Arte Cabaliſtica.*

(e) *Multa præterea de ſideribus atque eorum motu, de mundi & terrarum magnitudine, de rerum natura, de Deorum Immortalium vi ac poteſtate diſputant, & in virtute tradunt.* Lib. 7. de Bello Gallico.

Secondly, (e) *Cæſar* further adds, That the *Druids* diſpute many things of the Stars, and of their Motion, and of the greatneſs of the World and the Earth, of the Nature of things, of the Power of the Immortal Gods, and ſeveral things of Vertue: And ſo *Mela* ſaith, *Druides motus Cæli & Siderum profitentur*, They diſcourſed of the Motions of Heaven and Stars.

(f) *Sacrificiis interdicunt; hæc pœna apud eos eſt graviſſima.* Id. lib. 6.

Thirdly, They excommunicated thoſe that ſtood not to their Sentence, that is, they (f) forbid them to come to ſacrifice, which among them was the moſt grievous puniſhment, and thoſe who are thus excommunicated, are accounted wicked and ungodly Wretches; every Body goes out of their way, and ſhuns their Company and Converſation, for fear of getting harm by Contagion; neither have they the benefit of the Law when they deſire it, nor is any reſpect ſhown to them.

(g) *Druidibus præeſt unus qui ſummam inter eos habet Authoritatem.* Id.

Fourthly, (g) *Cæſar* ſaith further, That they have one over them, who hath the chiefeſt Authority amongſt them; and when he dies, if there be any one that is eminent above the reſt, he ſucceeds in place; but if there be ſeveral of equal merit, one is choſen by Majority of Votes.

(h) *Num.* 1. 48. *Ezra* 7. 24.

Fifthly, They were wont to be excuſed from perſonal Attendance in War, nor did they pay Taxes with the reſt. Such Priviledges we find the (h) *Levites* among the *Hebrews* enjoyed.

(i) *Magno præterea apud omnes Gallos in honore ſunt, nam fere de omnibus controverſiis publicis privatiſq; conſtituunt; & ſi quod eſt admiſſum facinus, ſi cædes facta, ſi de Hæreditate, de finibus controverſia, iidem decernunt, præmia pœnaſque conſtituunt.* De Bello Gallico, l. 7.

Sixthly, As to Civil matters, they were in ſuch Honour as they determined almoſt all public and private Controverſies; and, as (i) *Cæſar* ſaith, if any great Wickedneſs be done, any Murther be committed; if there be any Controverſie about Inheritance or Boundaries; they do judge and appoint Rewards and Puniſhments. I ſometimes think *Facinus* may be interpreted any great or noble Enterprize done, becauſe *Cæſar* ſaith, They appoint Rewards, whereas to none of the other particulars Rewards are due. But this *obiter*.

* *Pauſanias in Phocicis.*

Seventhly, Theſe, ſaith the ſame *Cæſar*, at a certain time of the Year, in the Confines of *Carnutum* (*Chartres* according to *Ortelius*) which is eſteemed the middle of *France*, ſit in a conſecrated place, and thither, from every part, thoſe who have any Controverſies, meet, and they obey their Judgment and Decrees. From whence *Ramus* thinks, That the *Druids* were diſperſed through *France*, as the Prieſts are now; and the Principal of them carried the Controverſies of their Citizens to this general Council, where the High Prieſts of the *Druids* preſided; and that this was like the Convention of the *Amphictyons* (f) of *Delphos*, when *Greece* was at Freedom; and he thinks this Power of the *Druids* was Kingly, not only over every private Perſon, but over the whole People.

Druids in *Britain.*

(g) *Gallorum diſciplina in Britannia reperta, atque inde in Galliam tranſlata eſſe exiſtimatur. Et nunc qui diligentius eam rem cognoſcere volunt, plerumque illo diſcendi cauſa proficiſcuntur.* Cæſar, lib. 6.

I have enlarged thus far of the *French Druids*; which ſome may ſay, appertains not to the *Britans*; but if we will believe (g) *Cæſar*, we ſhall find that the Diſcipline of the *Druids* came from *Britain* to the *Gauls*: for ſpeaking of them he ſaith, That the *French* Diſcipline, *i. e.* the Arts, *&c.* taught by the *Druids*, was

was found in *Britain*, and from thence is believed to be transmitted into *Gallia*; and now, saith he, those that will more diligently know it, for the most part go thither, *i. e.* to *Britain*, to learn it. I know *Ramus* faintly opposeth this, because *Cæsar* speaks elsewhere of the *Gauls* making a part of *Britain*; and that of the *Britans*, the *Gauls* are the most civil: all which may be true, and yet the Doctrine have its Original here; and *Ramus* concludes from this, That the Discipline or Learning of the *Britans* and *Gauls* were both one.

The *Druids* Ceremony in cutting the Misleto from the Oak.

I shall refer the curious to what *Pliny* saith of the *Misleto*, with how great Ceremony it was cut by the *Druid* Magicians, as he calls them, there being present two white Bulls; the Priest climbing the Tree in a white Garment, and cutting the Misleto from the Oak with a Golden Pruning-knife, and receiving it in a white Cassock, and then the Bulls were sacrificed. *Britain* being so famous for the best Oaks, and the word *Druid* coming from the *Greek* word Δρῦς an Oak, we may safely rely upon *Cæsar*'s Testimony for the bringing the Learning of the *Druids* from *Britain* to *France*.

That which I infer from this Discourse is, that there were Laws in *Britain*, and that the *Druids* were the Lawyers and Judges; but how the Laws were made, or what they were among the *Britains*, is not in my reading to inform the curious; how and for what cause the *Druids* were extirpated, I shall speak hereafter.

Of the *Equites*, or Nobility.

The other Member of the honourable part of the *Gauls*, were the *Equites*, under which are to be comprehended the Princes and Soldiers. (*w*) *Cæsar* tells us, That not only in every City and every Territory (for so I interpret *Pagus*) but also almost in every Family there were Factions; and they are the Princes of the Factions, who in their Judgment are esteemed to have chief Authority; to whose Arbitriment and Judgment, the Supremacy of all Matters and Councils are remitted. This, he saith, was invented, that the common People might not want some to defend them, for every one would hinder his own People from being oppressed or circumvented; and if in that they failed them, they lost their Authority over them; and this *Cæsar* saith was the manner throughout all *Gallia*.

(*w*) *Lib.* 6. *Factionum Principes sunt qui summam Authoritatem eorum judicio habere existimantur, quorum ad Arbitrium judicium-que summa omnium rerum conciliorumque redeat.*

From hence (*x*) *Ramus* concludes the Government was a *Timocratia*, or the πολιτεία of *Aristotle*, which he and *Plato* so commend, and which was used in *Greece* and *Italy* while free, where there was a mixture of Kingly Government in Annual Magistrates, or of longer Duration; and of *Aristocracy* in the Senate, and *Democracy* in the Authority of the People, in chusing or abdicating their Authority; all which he concludes from the last Clause, That if the Princes of the Factions did not protect those under them, they lost their Authority.

(*n*) *De moribus vet. Gall. p.* 116.

The Princes Heads of *Clans*, or of the *Pagi*.

I rather judge these Princes of Factions, to be the Heads of such as we call *Clans*, in the *Highlands* and *Ireland*; for I see

no

no shadow of that Polity, *Ramus* speaks of in this Description, and I believe the Government both of *Gaul*, *Germany* and *Britain*, was rather in several Circles and Destricts, than that any one Monarch was over all; only in time of War one or more were chosen, by common consent, to be their Captain General; or where the *Romans* could prevail, they established a Commonwealth Government.

(k) *In pace nullus communis Magistratus, sed Principes Regionum atque Pagorum inter suos Jus dicunt, controversiasq; minuunt.*

As to the first and second we have the Authority of (k) *Cæsar* speaking of the *Germans* (with whom the *Gauls* are all along compared by *Ramus*) he saith, In time of Peace, the Princes of the Country and of the *Pagi* give Law among their own People, and take order to end their Controversies, and then there is no common Magistrate; but when there is a War either made by, or upon the City, Magistrates are chosen, who have the command of the War, and have Power of Life and Death. Such a like choice we find, by a Common Council of several Kings and Princes in (l) *Britain*, was made of *Cassivillan*, to manage the War against *Julius Cæsar*.

(l) *Comment. lib.* 5.

That the *Gauls*, by a Common Council at *Bibracte*, chose *Vercingetorix* singly for their General against *Cæsar*, is well known; and when he was besieged in *Alexia*, by another Council of the Princes, the *Heduans* and *Avernois*, with their Client Towns or Cities, which were many, were to raise 35000. Men, and so others proportionable, and their Forces were committed to four Generals: Now it is said by *Cæsar*, that when *Vercingetorix* had the sole command, that he placed his Camp on an Hill, and at certain distances he disposed the forces of every City several, and every day called to him the Princes of those Cities, either to communicate something to them, or order them to do something.

(a) *Quodque præcipuum fortitudinis incitamentum est, non casus, non fortuita conglobatio turmam aut cuneum facit, sed familiæ & propinquitates.* 1. Annal.

The like manner of *Clans* and Families (of which he who was most able for Military Service, at that time commanded) we have a plain proof in (a) *Tacitus*, who saith of the *Germans*, That the principal incitement of valour was, that not chance or fortuitous meeting and embodying made a Wedge or Troop, but Families and Kindred: So he saith, That *Ariovistus* at equal Intervals, placed the *Marcomanni*, *Triboci*, *Vangiones*, *Nemetes*, *Seduſii* and *Suevæ*.

Several Petit Kings in *Gaul*.

That both the *Gauls*, *Germans* and *Britains* had several Kings, Roylets or absolute Princes, who had some one or more City or Country under his peculiar command, is very clear in *Julius Cæsar*: So *Galba* the King of the *Sueſſiones*, was chosen Commander in Chief against *Cæsar* by the *Belgians*. The opinion I have also, that such Princes were the Heads of *Clans* appears in that of *Orgetorix*; who when the City of the *Helvetians* (which had under it fourteen Towns, *oppida*, and forty Hamlets, *Vicos*, and four *Pagi*, Burroughs or Places of Judicature, where were Senates) all met in Consultation about burning their Country, and possessing the Empire of *Gaul*: This *Orgetorix* being elected; but they having notice of his Conspiracy against

againſt them, ſeize on him, and condemn him to be burnt: but upon the Day, *Orgetorix* ſummoned all his Family, or Kindred, or thoſe of his Houſe or *Clan*, as by *Familia* muſt be underſtood. which conſiſted of a Thouſand Men, and all his Clients and Bondſ-men or Debtors, *obæratos*, whereof he had a great number, and they reſcued him.

Such as this *Orgetorix* was, I doubt not *Cavarinus* was, who and his Anceſtors, *Cæſar* ſaith, were Kings of *Agendicum* and *Villannodunum*: So *Targetius* of the *Carnuti*, *Vertiſcus* Prince of *Rhemes*, *Divitiacus* King of the *Sueſſiones*, *Comius* King of the *Atrebates* or *Artoys*, and the two Kings of the *Eburones*, *Ambiorix* and *Cativulcus*, *Cingetorix* of the *Triveri*: I ſhall add but one Teſtimony for all, of (*b*) *Cæſar*'s, That Kingdoms were acquired in *Gallia* by thoſe who were the moſt Powerful, and thoſe that have moſt Wealth to hire Men.

(*b*) *Regna vulgo in Gallia a potentioribus atque iis qui ad conducendos homines facultates haberent, vulgo comparabantur.*

Several Petit Kings in *Britain*.

As to the affairs of *Britain*, recorded by *Julius Cæſar*, we find *Caſſibilan*, choſen to manage the War. In *Kent*, no great County, we find Kings, *viz. Cingetorix*, *Carvilius*, *Taximagulus* and *Sergonax*, and it cannot be doubted but there were many other petty Kings in the reſt of the Country; for we find that *Mandubraces*, Son of *Imanventius* King of the *Trinobantes*, *i.e. Middleſex* and *Eſſex*, ſlain by *Caſſibilan*, was reſtored by *Julius Cæſar*; and after we find in *Octavius Cæſar*'s time, *Cunobelin* King of the ſame, whoſe Son *Adminius* fled to *Caius Caligula*, where he came to *Belgia* for Protection; ſo we read of *Caractacus* who maintained War for nine Years with the *Romans*, and whoſe magnanimous Speech to *Claudius* is extant in *Tacitus*; ſo of *Cartiſmandua*, a Queen of *Brigantes* that betrayed *Caractacus*. I might give an account of *Praſulagus*, King of the *Icenians*; the famous *Boodicia* his Queen, and of the famous *Caledonian Galgacus*: but it is enough to my purpoſe, that among the *Britans* we find Kings ſo ſtiled by *Julius Cæſar*, and other Writers, eſpecially by *Tacitus*, and *Dion*, (*d*) ſpeaking of *Aulus Plantius* (ſent General by order of *Claudius Cæſar* with an Army into *Britain*) ſaith, That the Inhabitants at that time were ſubject to divers Kings of their own.

(*c*) *Britanni olim Regibus parebant, nunc per Principes factionibus & ſtudiis trahuntur.* Tacit. vita Agric. c. 12. Therefore he tells us, Their want of agreeing in Common Councils, occaſioned their certain Overthrow. *Pro nobis nihil utilius quam quod in commune non conſuluntur: rarus ad propulſandum commune periculum conventus: ita dum ſinguli pugnant, omnes vincuntur.* Id.

(*d*) Ἡσαν ἢ ἄλλοις Βασιλεῦσι πεφθαγμένοι. *Hiſt. Rom. lib.* 60.

I ſhall now ſumm up the reſt of the Laws, Cuſtoms, or Uſages we find amongſt the *Gauls* or *Britans*; and firſt what concerns the publick, out of *Cæſar*.

(*e*) *Magiſtratus quæ viſa ſunt, occultant, quæque eſſe ex uſu judicaverint, multitudini produnt.*

The Magiſtrates (*e*) conceal thoſe things they think fit, and what they judge may be of uſe to the Publick, they diſcover to the Populace.

(*f*) No Body hath leave to ſpeak of the Commonwealths, or of publick affairs, but in Council.

(*f*) *De Repub. niſi per concilium loqui non conceditur.* De Bello Gallico, l. 6.

They (*g*) came Armed into the Council, as *Livy* ſaith; and *Tacitus* ſpeaks the like of the *Germans*.

(*g*) *Armati, ita mos gentis erat, in Concilium venerunt.*

(*h*) It was eſtabliſhed, that if any received any Rumours from the Neighbourhood, or any report concerning the Republick, that he relate it to the Magiſtrate, and none elſe.

(*h*) *Liv. lib.* 21. *Sancitum, ſi quis quid de Rep. a finitimis rumore aut fama acceperit, uti ad Magiſtratum deferat, neve cum quo alio communicet.*

They had ſomething which our Hue (*i*) and Cry reſembles: when any great or famous thing happens, they give notice of it

(*i*) *Ubi major atque illuſtrior res incidit, clamore per Agros & Regiones ſignificant, hanc alii deinceps excipium, & proximis tradunt.* De Bello Gallico, lib. 7.

it by loud Cry through the Fields and Countries, and this others receive and transmit it to the next, so that in a Day, as he observes, Intelligence is given above an hundred Miles.

One thing more is remembred by *Plutarch de virtutibus Mulierum*, that it was grown a Custom amongst them, that they treated of War and Peace with their Women in Company; and if any question arose betwixt them and their Allies, they left it to them to determine. On this Head the famous *Selden* spends a whole Chapter to reckon up the famous Princesses and Women; and (k) *Tacitus* saith of the *Germans*, In Rule they made no difference in Sex: which shews it was Hereditary.

(k) *Sexum in Imperiis non discernunt.* Tacit. vita Agric.

I now come to the more private Usages in their Families and Servants.

(l) *Cæsar* saith, They do not permit their Children to come to them in open Sight, but when they are grown up to that Age, that they may be able to undergo Military Duty, and serve in War: And of the *Britans* he (m) saith particularly, They have ten or twelve Wives in common amongst them, and especially Brothers, and Fathers with their Children; but what Children were born of such Mothers, were fathered on them by whom they were first lain with when they were Maids.

(l) *Suos liberos, nisi cum adoleverint, ut munus militiæ sustinere possint, palam ad se adire non patiuntur.* De Bello Gallico, l. 6.

(m) *Uxores habent deni duodenique inter se communes, & maxime fratres cum fratribus, & parentes cum liberis: sed si qui sunt ex his nati, eorum habentur liberi, a quibus primum virgines quæque ductæ sunt.* Idem.

This strange Confusion had some thing of the Primæval Practice of *Polygamy*, and some think helped to the multiplying of People; where it must be rare for any Woman to be unfruitful, that had so many Gallants.

The Men (of *Gaul* (n) *Cæsar* now speaks) what Mony they receive with their Wives upon account of Portion, they lay down so much out of their own Estate, upon an Appraisement made, to make a Joint-stock with the Portion. There is an account jointly kept of the Product and the Profits reserved, and the longer Liver enjoys all.

(n) *Viri quantas pecunias ab uxoribus dotis nomine acceperunt, tantas ex suis bonis, æstimatione facta, cum dotibus communicant, &c.* Idem.

The Men have Power (o) of Life and Death over their Wives as well as over their Children, saith the same *Cæsar*. Whereupon *Bodin* (p) chargeth *Justinian* with a falshood, for affirming that other People had not the same Fatherly Power as the *Romans* had.

(o) *Viri in uxores, sicuti in liberos vitæ necisque habent potestatem.* Idem.

(p) *Bodin. de Repub. lib.* 1. *c.* 2.

When a Master of a Family, who is of higher Birth and Quality, dies, his Kindred meet together, That if the manner of his Death were suspicious, they may by Torture, as Servants were used, examine the Wife concerning the Business, and if she be found Guilty, they (q) torment her miserably, and burn her alive.

(q) *Cæsar de Bello Gallico, lib.* 6. *Igni atque omnibus tormentis excruciatas interficiunt.*

To this Sir (r) *Edward Coke* referrs the Antiquity of that Law, which we at this day use of devoting to the Flames those wicked Baggages who stain their Hands with the nefarious Murther of their Husbands.

(r) Preface to the Sixth Book of Reports.

Those Servants (s) and Dependants, who were known to have been beloved by their Masters in his Life-time, were when the Funeral Rites were prepared, burnt with him for Company. This was used by many Nations.

(s) *Servi & Clientes, quos ab iis dilectos esse constabat, justis funeribus confectis, una cremabantur.* De Bello Gallico, lib. 6.

Many

Many when they are (*t*) oppreſt with Debt or great Taxes, or with the injurious Oppreſſion of great Men, put themſelves out to Service to the Nobles: over ſuch they have the ſame Right or Authority, as Maſters have over their Servants or Slaves.

(*t*) *Plerique cum aut ære alieno aut magnitudine Tributorum aut injuria potentiorum premuntur, ſeſe in ſervitutem dicant Nobilibus. In hos eadem ſunt Jura quæ dominis in ſervos.* Idem.

Thus I have extracted the principal Laws, Uſages, Cuſtoms and Powers of Government, Civil and Religious, uſed by the *Gauls* and *Britans*, as they are recorded by *Julius Cæſar* and others: in which we find the *Druids* were their Gownmen, and were the Guardians, and Interpreters of their Laws; the ſame *Cæſar* telling us poſitively, That the Diſcipline of theſe *Druids* was firſt found in *Britain*.

That the *Romans* ſetled Commonwealths where they conquered.

I come now to the laſt Particular, that where the *Romans* conquered, they eſtabliſhed a form of Commonwealth in ſuch places as they thought moſt convenient for their Obedience to them, and in other places they allowed Tributary Kings; which will appear by what follows.

(*d*) The *Averni* of the *Gauls* were a great People. *Bituitus* was their King, and fought two bloody Battles with the *Romans*, the one againſt *Domitius*, and the other againſt *Fabius*; he being taken Priſoner, and his Son *Congentiatus*, were deprived of the Kingdom by the Senate, and the City ſet free: Afterwards *Ciltilus* Father of (*e*) *Vercingetorix*, although he had by Battle got the principality of all *Gaul*; yet aſpiring to be King, was ſlain by the City, who had obtained this freedom from the *Roman* Senate: So that it was a free City till *Cæſar*'s time, and is reckoned ſo in *Pliny*'s time; yet though there were ſome made ſo free by the *Romans*, and others following the Example of the *Romans*, had caſt off their Princes and Kings; yet I cannot with *Ramus*, conclude ſo univerſally of the *Gauls*, That every where the Government conſiſted of an elected or annual Prince and Senate, and People that had free ſuffrages.

(*d*) *Livius, lib.* 61.

(*e*) *Cæſ. Comment. l.* 7.

Having thus far given ſome ſhort hints of the Government of the *Britans*, by comparing them with the manner of the Government of the *Gauls* and *Germans*, as ſuppoſing it might be made out from good Authority, that there was a great Agreement in their Forms of Government: I come now more directly to prove, that where the *Romans* conquered, they eſtabliſhed their own Laws; and that the unwritten Laws and Cuſtoms muſt be of little force, during the Peoples Subjection to the *Romans*; and ſo by ſome Hundred of years diſuſe, were like to be ſo far forgotten, as it cannot be ſaid (as Chancellor *Forteſcue* doth) that during the *Britans*, *Romans*, *Saxons*, *Danes* and *Normans*, the Realm hath been ruled with the ſelf ſame Cuſtoms.

Firſt therefore we may conſider, That the *Druids* (who if they had not the Law-making Power, yet were the ſole Judges, and decided all Controverſies) being ſo wholly aboliſhed; and we finding no account of the Laws they judged by, we may well conclude, That the *Britiſh* Laws (whatever they

Where the *Romans* conquered, they eſtabliſhed their Laws.

were) loſt their Eſteem and Uſe. Eſpecially when we conſider that the *Roman* Conqueſt broke and deſtroyed all the Princely Families, eſpecially the lineage of their Kings. So that now none had any ſetled Authority, but as he could court the People, if he intended to make a party againſt his Neighbour, or oppoſe the *Romans*: which might be the true reaſon why *Xiphilin* (*f*) ſaith, That with the *Britans* the People had a great ſhare in the Government, which might very well be after the Subverſion of their Monarchies, and the Commixture of the *Roman* Colonies with them.

(*f*) *Apud Britannos populus magna ex parte Principatum tenet.* Vita Severi.

(*g*) *De moribus vet. Gallorum, p.* 77. The *Romans* introduced their Language where they conquered.

(*g*) *Ramus* complains, That the *Roman* Conqueſt made the *Gauls* loſe their own Native Language, while, not only the *Roman* Laws, but their Legions ſetling there, compelled the *Gauls* to ſpeak their Language; beſides, he ſaith, There were public Stipends allowed by the *Roman* Emperors, to have the Language taught. Therefore we in *Britain* may well preſume the ſame befel us.

But the baniſhing and utter exterminating the *Druids*, is to me a ſtrong Argument, that the *Britiſh* Laws were alſo expunged; which I ſhall now give a ſhort Account of. (*h*) *Diodorus* tells us, of the *Druids* ſacrificing Captives to the Gods; and *Cæſar* tells us, They uſed Human Sacrifices, without which they thought the immortal Gods could not be appeaſed. *Diodorus* ſaith, The *Saronidæ* when they conſulted about great matters, they killed a Man with the Sword; and from the manner of his falling, the flowing of his Blood, and other things, they prognoſticated future Events; and (*i*) *Cæſar* tells us, That he who comes laſt to the Council armed, in the view of the Multitude, was put to death by Torments. *Strabo* ſaith, That in their Temples, they ſometimes ſhot a Man to death with Arrows, as he hung upon a Croſs; and out of *Artemidorus*, That in *Britain* Sacrifices were made to *Ceres* and *Proſerpina*, after the manner of the *Samothracians*. *Cæſar* and *Strabo* both ſpeak of their making great Figures, or *Coloſſuſes* of Twigs and Wands, or Wood covered over with Hay, which they filled with living Men and Beaſts of ſeveral ſorts, and ſo burnt them together. Although *Ramus*, in extenuation of theſe, brings ſome parallel Sacrifices done by the *Romans*, and aſcribes them rather to the influence the *Gentile* Devils had over People, in making thoſe *atrocia & horrenda Sacrificia*, than that it was peculiar to the *Druids*; yet I think there is no Apology to be made for them: That of *Lucan* being true of them,

(*h*) *Idem, p.* 95, 96, 97. Why the *Druids* were aboliſhed, with their wicked Rites.

(*i*) *Lib.* 5. *Comment.*

Et vos Barbaricos ritus, moremq; ſiniſtrum
Sacrorum, Druidæ, *poſitis repetiſtis ab armis*,
Solis noſſe Deos, & Cæli numina vobis,
Aut ſolis neſcire datum——

(*k*) *Tiberii Cæſaris Principatus ſuſtulit Druidas Gallorum.* Hiſt. Nat. l. 30. c. 1.

(*k*) *Pliny* tells us, That in the Princedom of *Tiberius*, the *Druids* of *Gaul* were taken away, which *Lipſius* well notes, That

That it referred only to *Rome*, in ſuch ſence as *Suetonius* ſpeaks of forbidding it in the Cities: But in *Claudius*'s time, the Religion of the *Druids* was wholly aboliſhed among the *Gauls*, by reaſon of its curſed cruelty; which in *Auguſtus*'s time, was only forbid to be practiſed in Cities: *Druidarum* (*l*) *Religionem apud Gallos, diræ immanitatis, & tantum Civibus ſub* Auguſto *interdictam, penitus abolevit.* It may well be imagined, that the taking of it away in *Gaul*, extended alſo to *Britain*, as far as the *Romans* were Maſters of it; which was both the Mother and Nurſery of it.

(l) *Sueton. Claud. c.* 25.

This exterminating the Religion made (*m*) *Mela* (who lived under *Claudius*) ſay, That it made the Schools of the *Druids*, not to be public, but ſecretly kept in Caves and obſcure Groves; it being now ſpoiled of its Honour, and as *Lucan* agrees with *Pomponius*,

(m) *Non jam illuſtres iſtas Druidum ſcholas, ſed clandeſtinas in ſpecu & abditis ſaltibus efficit.*

——*Nemora alta, remotis*
Incolitis Lucos——

No doubt this prohibiting of theſe Holy Rites of the *Druids*, made the Nations governed by them in point of Law (as the *Gauls* and *Britans* were) not ſo reſpectful of them as before they were, and ſo they became more prone to receive the Laws of *Rome*, which had prohibited the Reverence before given to them, and having conquered them, would enjoyn them the obſervance of their Laws.

The *Romans* impoſed their Laws where they conquered.

That the *Romans* impoſed their Laws in ſuch parts of *Britain* as they had conquered, is manifeſt by ſundry good Inferences from antient and approved Authors; which (*n*) *Lipſius* hath gathered, who poſitively affirm, That whereever the *Romans* conquered, were it Town or Nation, they uſed to carry ſome part of the People to *Rome*, and leave other parts behind; but ſo as they mixed the *Romans* with them, to have the Cuſtody and Government of them; and thoſe ſo ſent they called *Coloni*, and the places (*o*) *Colonies.* The *Triumviri* divided to them their ſhares of Land, and ordered the Laws and Government of the Town, which was head of the Colony, and the Juriſdiction of it; ſo (*p*) that all might reſemble the Mother City *Rome*, even in Market places, and all places of public Congreſs, Capitol, Temples, Courts, *&c.* the *Duumviri* being in moſt places inſtead of Conſuls, and the *Ædiles* and *Decurions* for the Senate.

(n) *De magnitudine Romana, lib.* 1. *c.* 6. *p.* 28. *Vid. A. Gellium lib.* 16. *c.* 13.

(o) *Hic denique populus Colonias in omnes Provincias miſit; ubicunque vicit, Romanus habitat.* Seneca ad Albinum, c. 7.

(p) *Sic tamen ut omnia Romam & urbem matrem referrent.* Id. Lipſius.

(*q*) *Tacitus* tells us, That at *Camalodunum* (now *Maldon* in *Eſſex*) there was a Colony ſent to be a Defence againſt Rebels, and to cultivate the conquered (admitted now into Confederacy with *Rome*) in the Offices of the Laws. So that here we find the *Socii* to be inſtructed in the *Roman* Laws, which evidently demonſtrates, That the *Britiſh* Laws were not allowed to be uſed: That Courts of Judicature were alſo here, *Tacitus* confirms, when he tells us, that under (*r*) *Suetonius Paulinus*,

(q) *Colonia Camalodunum ducitur valida veteranorum manu in agros Captivos, ut eſſet ſubſidium verſus Rebelles, & imbuendis ſociis ad officia Legum.* Lib. 12. Annal. Dio Hiſt. lib. 60.

(r) 14. *Annal. Externos fremitus in Curia eorum auditos.*

linus, ſtrange noiſes were heard in the Courts of Judicature there; ſo an old Inſcription remembers one *Aurelius Baſſus Cenſitor civium Romanorum Coloniæ Victricenſis, quæ eſt in Britannia Camalodunum.* This *Cenſitor* or *Cenſor* (for they are promiſcuouſly uſed by *Ulpian*) was one, who did not only tax all to the public Contributions, but was a Judge in the Courts, corrected all miſdemeanors of manners, had Power over Senators, and in many other things acted Juridically.

Gruteri Inſcr. Lipſ. ad lib. 12. Tacitum. 75.
So we read of a Temple built to *Claudius*, which was *Ara* (or, as *Lipſius*, *Arra*) *æternæ dominationis*, an Altar or Earneſt of eternal Command.

The Officers ſent abroad by the *Romans* into the Provinces and Colonies.

We find two alterations made in the Officers, ſent abroad into the Provinces and Colonies of the *Romans*, the one in *Auguſtus* his time, and the other by *Conſtantine* the Great. Before *Auguſtus* his Reign, the greater Provinces were ruled by *Proconſuls*, the leſſer by *Prætors* and *Queſtors*, the Provincial *Prætors* were Judges, gave Sentence according to Law, and we may be ſure that was the *Roman* Law.

In *Auguſtus* time thoſe principal Magiſtrates, ſent into the Provinces, bordering on the Enemy, or Frontiers of the Empire, were called *Legati*, the Magiſtrates or Officers in *Italy* were *Prætorian* and *Conſular*, thoſe abroad, *Proprætorian* and *Proconſular*. Whoever deſires to ſee more of this or what was appointed under *Conſtantine*, may have recourſe to *Pancirollus de Magiſtratibus Municipalibus*, *Alciatus de Magiſtratibus*, and the *Notitia Provinciarum*; where all the Officers are deſcribed, with the ſeveral Provinces, and the Cities contained in them, and the Enſigns or Symbols of the Officers. Then *Britain* was divided into five parts; *viz.* *Britannia prima*, and *ſecunda*, *Flavia Cæſarienſis*, *Maxima Cæſarienſis*, *& Valentia*, being all under the Vicar, or Deputy of *Britain*, under the Viceroy or *Prætorian* Prefect of *Gaul*; we find in the *Roman* Coins, exhibited by *Camden*, a Colony at *York*, *Divana*, or *Cheſter*, and others. So that it cannot be thought that *Britain* was not as ſubject to the *Roman* Laws, as other Conquered Countries. Whence (*s*) *Malmsbury* ſaith, That *Julius Cæſar* compelled the *Britans* to ſwear Obedience to the *Latin* Laws. And *Gildas* * ſaith, it was reckoned not *Britannia*, but *Romania*.

(*s*) *Latias ab eo jurare Leges compulſam.* De Geſtis Reg. l. 1. c. 1.

* *Non Britannia ſed Romania cenſebatur.* Excid. Britanniæ.

The *Britans* learn the *Roman* Arts and Language.

And more particularly, that *Britain* was ſubject to the *Roman* Law, theſe Obſervations following will prove.

‖ *Tacitus* tells us that in his time the *Britans* began to learn the Arts, and to exceed the *Gauls* in Wit and Learning; and though they did at firſt reject the *Roman* Speech, yet at length they did covet their Eloquence: from thence they had in Eſteem the *Roman* Habit, and their Gown was frequently worn, and by little and little they deſcended to the faſhionableneſs of their Vices, in their Portico's, Baths, and Beauty or ſumptuouſneſs of their Banquets; which among the ignorant was called Humanity or good Breeding, whereas it was a part of their Servitude.

‖ *Linguam Romanam abnuere, poſtea eloquentiam concupiſcere; inde etiam habitus noſtri honor & frequens toga, paulatimque diſceſſum ad delinimenta vitiorum, Balnea, Porticus & conviviorum elegantiam; idque apud imperitos humanitas vocabatur, cum pars eſſet ſervitutis.* Vita Agric. c. 21.

If we add to this the Conſideration of what I have noted out of *Ramus*, of the change of the *Gallick* Language and Laws, we may conclude that the ancient (*t*) Poet ſpoke Truth; who ſaith,

(*t*) *In Catalect. vet. Poet. lib. 1. tit. 7.*

Cernitis

Cernitis ignotos Latia ſub Lege Britannos.

All theſe things are to be underſtood of the natural *Britans*, who no doubt were not backward in affecting the *Roman* Laws as well as the other things mentioned by *Tacitus*. For which the Language and Rhetoric were moſt uſeful; otherwiſe what need was there of having Lawyers from *Gaul*, which the Poet calls (*u*) *Nutricula Cauſidicorum*, and who tells us that

(u) *Juvenalis Sat.* 7.

(*x*) *Gallia Cauſidicos docuit facunda Britannos,*
De conducendo loquitur jam Rhetore Thule.

(x) *Satyra* 15.

So we find, That *Severus* left his Son (*y*) *Geta* (when he made his Northern Expedition) to be as Lord Preſident of the *North*; and *Papinian* the famous *Civilian* ſate in the Tribunal at *York*, and from thence, *Severus* and *Antonius* ſet forth the Imperial Edict, (*z*) *de rerum Venditione.*

(y) *Herodian. lib.* 3. *Furi dicendo rebuſque civilibus ut præeſſet.*

(z) *Cod. lib.*3.*tit.*32.

Hitherto we find no probability of any Laws amongſt the Conquered *Britans*, but ſuch as the *Romans* impoſed or allowed of. After the *Britans* embraced Chriſtianity, we have ſome imperfect accounts of King *Lucius* ſending to Pope *Eleutherius* to ſend him the *Roman* Laws, and of *Cæſar*. But Sir *Henry Spelman* (*a*) and others, do juſtly reject this as ſpurious, becauſe he could not want thoſe, nor avoid the obedience to them in his own Country; for, as he ſaith, from the time of the Emperor *Claudius*, who ſubdued moſt of *Britain*, the *Roman* Laws were publiſhed in *Britain*, and the *Brigantes* (the Inhabitants of *Yorkſhire*, and the Countries beyond *Humber*) according to *Seneca* (*b*) were ſubject to them, who ſpeaking of *Claudius Cæſar*, writes thus,

That Laws were not like to be made by the *Britans*, while under the *Romans*.

(a) *Cum has domi a Romano Præſide (nec fugiendas quidem) obtineret.* Concil. Tom. 1. p. 35.

(b) *In ludo de morte Cl. Cæſ.*

Ille Britannos ultra noti littora Ponti,
*Et Cæruleos * ſcuta Brigantas dare Romuleis*
Colla catenis juſſit, & ipſum nova Romanæ
Jura ſecuris tremere Oceanum.

*vel *Scoto-Brigantas.* Senec. in Octav.

So in another place,

Cuique Britanni terga dedêre,
Ducibus noſtris ante ignoti,
Juriſque ſui.

There being nothing to be found of ſecular Laws of the *Britans*, either before their expulſion by the *Saxons* into *Wales*, or after, (excepting ſome Eccleſiaſtical Conſtitutions in *Synods*) till the Laws of *Hoel Dha*, *i. e.* the Good: I muſt refer the inquiſitive Reader to Sir *Henry Spelman*'s firſt Volume of Councils, where he will find the firſt at *Verulam*, or St. *Albans*, *Anno Chriſti* 446. that by St. *German* againſt the *Pelagian* Hereſy, *Anno* 449. that in *Wales* near the Mountain *Erir*, that under *Dubritius*,

Concerning the Laws of *Hoel Dha*, and the *Britans* in *Wales*.

Dubritius, and three at *Landaff*, before the year 560. and others at *Landaff* after *ann.* 887.

Now as to the Laws of *Hoel Dha*, the Preface to his Laws saith, That he seeing his *Welsh* insolently to abuse the Laws, he called out of every *Kemut* or Hundred of his Kingdom, six (c) Lay-men, excelling in Authority and Wisdom, and all the Ecclesiastics dignifyed with Pastoral Staves; as Archbishops, Bishops, Abbats and Priors, to a place called *Guin sup. Taff yn Deved*, which House he would have built with white Wands, for an House to lodge in when he came to hunt in the parts of *Demetie*; wherefore it was called *Ty Gvyn*; there they stayed all *Lent*, praying and fasting, *&c.* of those the King chose Twelve Lay-men, most learned, and one Clergy-man called *Blangorid*, to instruct him in the Laws, that they might come neares to Truth and Justice, and ordered them to be writ in three parts: (d) One for his daily Court; another to be the Law of the Country; and a third to be of use for both: The Laws printed are all Ecclesiastical; only in (e) one of them it is said, that it is found in the *Roman* Laws, That where the number of Witnesses are not determined, there two are sufficient. As to the other Laws, I have not had the good Fortune to meet with any Transcript of them, only in (f) Sir *Henry Spelman*'s Glossary, I find that the Manuscript saith, That he abolished the old Laws, received by long Custom, and gave to his *Britans* new ones; which, from the Makers Name, are called the Laws of *Hoel Dha*.

(c) *Laicos viros auctoritate & scientia pollentes & omnes Ecclesiasticos dignitate baculosos.* Spelm. Concil. Tom. 1. fol. 408.

Twy gwyn ar Taff, the White House upon the River *Taff*.

(d) *Prima Lex Curiæ suæ quotidianæ; secunda, Lex patriæ; tertia, usus utriusque.*

(e) *Cap.* 25.

(f) *Glossar. p.* 362. *Leges pristinas longa receptas consuetudine abolevit, Britanniscque novas dedit.*

(g) Who over reads these Laws, saith a judicious (g) Author, will have little reason to think our Common Law ran from any such Fountain; and it seems the old Laws and Customs of this People were far worse and more rude yet, as the Proem informs us.

(g) Sacred Laws, *p.* 76.

I know some will be displeased that I take no notice of the *Mulmutian*, or of the *Mercian* Laws, concerning which the Abbat (h) of *Jorval* and the Monk (i) of *Chester* give this account, That *Dunwallo Mulmucius*, a *British* King (who lived 430 years before our Saviour) made those Laws which continued in esteem till *Edward* the *Confessors* days, by the Name of the *Leges Molmucinæ*, in which he appointed Cities, the Temples of the Gods, and the Ways leading to them, and the Ploughs of the Country Men to be Sanctuaries; and after *Mercia* (a Queen of the *Britans*) Wife of *Gwithelin* (whom *Leland* calls *Mercia proba*) in the Minority of her Son, saith the Monk of *Chester*, who ruled in the Country of the *Mercians*, published a Law full of Discretion and Justice, called the *Lex Mercia*; which two Laws *Gildas* the Historian translated out of the *British* Language into *Latin*; and these in the *Saxons* time, were called *Merchena Laga*, or the Law of the *Mercians*; which *Alured* the *Saxon* (saith the Monk of *Chester*) from the *Latin* turned into the *Saxon* Language, and added the *West Saxon* Law, and *Canutus* added the *Danelga* or *Danish* Law; all

(h) *Jo. Bromp. Coll.* 956. *num.* 10.

(i) *Lib.* 1. *c.* 50.

Concerning the *Mercian* Laws, not *British*.

See for this, and against it, what the Judicious *Selden* hath writ in his fourth, fifth, and sixth Chapters of his *Fanus Anglorum*, in which the Story of *Brute* is judiciously confuted.

all which three being joyned together by *Edward* the Confeſſor, made thoſe we call the Common Law or King *Edward*'s Laws.

To which I ſhall only give Sir *Henry Spelman*'s anſwer in his *Gloſſary*, That it is true that King *Alfred* did write the *Mercian* Laws into his own *Weſt Saxon* Laws; but (as appears by the Preface to his Laws) that he collected what ever he found in the Laws of King *Ina* his Countryman, *Offa* King of the *Mercians*, or *Ethelbert*, who was firſt baptized; and thoſe that were juſt, he collected, others being rejected. It is not probable that *Offa* a *Saxon* King, the cruelleſt Enemy to the *Britains*, having driven them out of all the Confines of his Kingdom into *Wales*, ſhould carry back their Laws as his Spoils; eſpecially the Laws being ſo wicked, that in the next Age they ſhould be expunged, and juſter Laws be choſen, as we ſee in the Preface to thoſe of *Hoel Dha*.

I ſhall offer but one Argument more, and ſo conclude with Sir *Henry Spelman*'s opinion: When *Ethelbert* King of *Kent* made his Laws *Anno* 613. as in the next Chapter I ſhall relate; *Bede* ſaith, he framed them after the *Roman* Example, after *Romana Biſena*; by which we may underſtand, either according to the Laws then uſed by the Civil or Eccleſiaſtic State of the *Romans*.

As to Sir *Henry Spelman* (*k*) he ſaith, when the *Goths*, *Saxons*, *Longobards*, *Danes*, *Normans* and other Inhabitants about the *Baltic* Sea, and Northern parts of *Germany*, had made great Conqueſts in *Europe*, they impoſed their Laws every where upon the conquered, and their Country Rites: hence the Agreement betwixt the Laws of the *Germans*, *French*, *Italians*, *Spaniards* and *Sicilians*; and who ever boaſt of the Antiquity of their Municipal Laws, can deduce them no higher. For (*l*) ſaith he, What conquering People will bow the neck under the Laws of the conquered, eſpecially when they have ejected a great part of them out of the Country? So that if the *Britains* had any Laws of their own, after the *Roman* Conqueſt, they muſt be preſerved in the remoteſt parts of *Scotland*, and after in *Wales*: but *England* had other Laws, as I ſhall make appear hereafter.

(*k*) *Gloſſar. tit. Lex.* Whence moſt Laws after the breaking of the *Roman* Empire.

(*l*) *Quis enim victor populus ſub victi legibus conquiniſcet?*

CHAP.

CHAP. XXIII.

Of the German *Government, and Laws of ſeveral Countries; after breaking of the* Roman *Empire, and an Introduction to underſtand the* Saxon *Law-makers.*

HAving treated of the State of the *Britans* under the *Romans*, I now in order ſhould immediately treat of the *Saxons* great Councils, and diſcover by what Authority Laws were made in their time, who made up the great Council, and whoſe advice was implied in the framing of their Laws: But before I enter upon Particulars, it may be needful to ſay ſomething of the *German* Polity, a Member of which moſt famous Country (though we find not them mentioned during the time of the twelve *Cæſars*) no doubt the *Saxons* were.

The Gods the *Germans* worſhipped.

Cæſar tells us, The *Germans* had no *Druids* * which attended Divine Matters, nor did they ſtudy Sacrifices, and that they accounted among the Gods thoſe they ſee, and from whom they are manifeſtly helped in their works, as the Sun, *Vulcan* and the Moon; the reſt they have not received as much as by report: But *Tacitus* mentions their God *Tuiſto*, born of the Earth, and his Son *Mannus*, and that they worſhipped *Mercury* moſt, to whom they ſacrificed Men; but to *Hercules* and *Mars* other Animals, and that ſome worſhipped *Iſis*.

* *Germani neque Druidas habent qui rebus divinis præſint, neque ſacrificiis ſtudent.*

Although the *Germans*, *Gauls*, and *Britans* were Barbarous, yet they were Valiant, and capable of great Improvement.

When I read in *Cæſar*, *Tacitus*, *Diodorus*, *Strabo* and others, of the Barbarouſneſs of the *Germans*, *Gauls* and *Britans*, their homely Diet, poor Cottages and Clothing, their Habitations diſperſed according as there was convenience of Water or Wood, and that uncultivated Diſpoſition they deſcribe; I am ready to think, before the *Roman* Attacques upon them, they had lived ſomething like the Savage *Indians*, and had little of Arts or Induſtry among them: but when I conſider on the other ſide, their great Armies, their Weapons, the Chariots of the *Britans* and *Gauls*, called *Eſſeda*, the (*a*) Lances of the *Gauls*, with Heads of Iron a Cubit long, and two Palms broad, their large Shields and Braſs Helmets; the *German* Spears called *Framiæ*, and the Ornaments of their Shields and Helmets, with Figures of Birds or four-footed Beaſts in Braſs, their orderly raiſing of ſuch and ſuch numbers of Men, in ſuch and ſuch Circuits and Juriſdiction of Cities, and their training up their Youth in Arms, and the Influence the *Druids* had in *Gaul* and *Britain*, and the Prieſts in *Germany* (in all which Particulars I could give a large account, but that *Ramus* hath ſaved me the labour:) I ſay, when I conſider this, I look upon them as People of brave and Heroic minds, and ſuch as were capable of great Improvements, and who were People of Courage and Proweſs. But I ſhall leave theſe things, and only

(*a*) *Lanceo ferreo cubitali longitudine, latitudine duorum palmorum, Ærea Galea caput muniebant paulatim eminentiore, in qua aut cornua impreſſa eſſent, aut avium vel quadrupedum effigies ſculptæ.* Cæſar. l. 3.

ſpeak

ſpeak of their Polity or Government Eccleſiaſtic, Military, and Civil.

As to their Prieſts, (*b*) *Tacitus* tells us, That in the great Confluxes of the People, they had ſome kinds of Preſidentſhip, and coercive Power in cauſing Silence. None were permitted to Correct, Bind, or Puniſh any with Stripes, but the Prieſts, not allowing them to be inflicted for Puniſhment, and at the Command of the Captain, but as it were (*c*) God commanding, whom they believe to be preſent with their Armies. Therefore he ſaith, they carry ſome Effigies or Symbols of their Gods, taken from their Graves, into their Battles. He (*d*) ſaith, the *Germans* do not confine their Gods to Walls, nor make them after the ſimilitude of Humane Shape, the greatneſs of Cœleſtial Powers not allowing it: they conſecrate Groves and Woods, and call by the names of Gods that Secret, which by Reverence alone they ſee. *Lucos ac nemora Conſecrant, Deorumque nominibus appellant Secretum illud quod ſola Reverentia vident.*

The Religion of the *Germans*.

(*b*) *Silentium per Sacerdotes, quibus tum coercendi Jus eſt imperatum.* Tacit. de Moribus Germ. 634.

(*c*) *Velut Deo imperante quem adeſſe bellantibus credunt.* Id.

(*d*) *Nec cohibere parietibus Deos, neque in ullam humani oris ſpeciem aſſimulare ex magnitudine cœleſtium arbitrantur.* Id. 633.

As to civil affairs, In their Councils (which (*e*) *Tacitus* before ſaith, they ordinarily held about the New or Full Moon) their Princes are choſen, who adminiſter Juſtice by Villages, and Dorps, and Council and Authority was in every Hundred. Such were our ancient Wapentakes, called Hundreds where (*f*) the Hundredary, and others judged: and in this account we have a deſcription of our Fortnight and Monthly Courts in Wapentakes, and of the Courts of Mannors; but of this Sir *William Dugdale* is to be conſulted in his Learned Treatiſe called *Origines Juridiciales.*

Their Civil Government.

(*e*) *Jura per Pagos Vicoſque reddunt, centeni ſingulis ex plebe comites, conſilium ſimul & auctoritas adſunt.* Idem

(*f*) *Conventus fiat in omni centena, coram Comite aut ſuo miſſo, & coram Centenario ipſum placitum fiat.* LL. Alaman.

I come therefore to their Princely and Military Government: For in ſo Warlike a Nation, it is deſcribed by (*g*) *Tacitus*, as fitteſt for that Service. He ſaith they take their Kings by their noble Extraction, and their Captains or Leaders by their Vertue or Proweſs, nor is the Power of their Kings free and abſolute; and their Captains by Example rather than Command, are obeyed. If they be ready handed, of a goodly Preſence, and ſignalize their Proweſs in the Head of their Armies, this gives them Command.

(*g*) *Reges ex Nobilitate, Duces ex virtute ſumunt; nec Regibus infinita & libera Poteſtas, & Duces exemplo potius quam Imperio. Si prompti, ſi conſpicui, ſi ante Aciem agunt, admiratione præſunt.* Id. 634.

Further he (*h*) ſaith, The King or Prince is heard (that is, valued, eſteemed and obeyed) according to his Age, his Nobility, his Warlike Atchievements or Eloquence, rather by the Authority of perſwading, than by the Power of Commanding. If the matter propoſed diſpleaſe, it is rejected with a fretting noiſe; if it pleaſe, they claſh together their Spears: the honourableſt kind of aſſent being to commend with their Weapons. All this ſeems to be fitted for Military Affairs; and *Tacitus* having had occaſion to treat of the *Germans* as they were engaged in Wars againſt the *Romans*, muſt be thought to make his principal Remarks from the Intelligence he had from the *Romans* that were employed againſt them: Therefore little can be expected of their Government in Times of Peace;

(*h*) *Mox Rex vel Princeps, prout ætas cuique, prout Nobilitas, prout decus Bellorum, prout facundia, audiuntur Auctoritate ſuadendi magis quam jubendi poteſtate: ſi diſplicuit ſententia, fremitu aſpernantur; ſin placuit, frameas concutiunt. Honoratiſſimum aſſenſus genus eſt armis laudari.* Id. 636.

which, no doubt, they rarely enjoyed after the *Roman* Ambition of ſubduing all their Neighbours, and bringing them under their Subjection, was ſo much endeavoured.

That the *Germans* were a Warlike Nation appears in all the accounts given of them; therefore *Cæſar* tells us, That the whole life time of the *Germans* was ſpent in Hunting and in Military Imployments. So *Tacitus* relates, That in their Councils, either one of the Princes, or the Father, or Kinſman adorn the Youth with a Shield and Spear: This being among them, as the Gown among the *Romans*, the firſt Honour of their Youth. So he ſaith, They divided the Inhabitants of the *Pagi* into Hundreds, of which one was the chief, and theſe were the Footmen in their Armies. Their Princes had always a great number of Companions in Arms, whom he calls *Comites* and *Comitatus*; (*l*) among whom was great Emulation, who ſhould obtain the prime place about the Prince; and ſo among the Princes, who ſhould have moſt, and the valianteſt Companions: where this number of Clients, Retainers or Companions is not only glorious to them in their own Country, but among their neighbour-Cities where they fight. It is ſhameful for the Prince, ſaith he, to be overcome by force, and as ſhameful for theſe Companions not to equal the valour of their Prince; and it is an infamous diſparagement to them, all their lives, to eſcape alive out of the Fight, if their Prince be ſlain: for to defend him, and to aſcribe their own valiant Actions to his Glory, is their principal Oath, the Prince fighting for Victory, and they for the Prince. If the City from whence they ſprung, hath grown ſluggiſh with long Peace and Idleneſs, the moſt of the Noble Youth, of their own accord, ſeek thoſe Nations where Wars are: Idleneſs being ingrateful to them; and the Princes cannot maintain theſe numerous Companions, but by Force and War: for theſe *Comites* require of the Prince's Liberality, the Warlike Horſe, and the bloody and conquering *Framea* or Spear. For plentiful Food, and Entertainments are to them in ſtead of Wages. Thus far *Tacitus*.

Methinks in this deſcription of the *Comites* and *Comitatus*, there appears ſomething like the *Feudal* dependence of the *Milites* upon the Prince; they are bound by Oath to defend him, they have Horſe, and Lance, or Spear, have liberal entertainment both in conſtant Food and Banquets for Wages; and that they had alſo Lands ſet out for the ſervice, the following words ſeem to imply, *viz.* That one cannot ſo (*n*) eaſily perſwade them to plough land, or expect the Fruits of the Year, as to provoke the Enemy, and to deſerve wounds; for it is ſluggiſh to them and dull to acquire that by Sweat, that they may obtain by Blood. Whether this imply'd a Feudal Tenure or not, I will not determine; but it ſhews a rudiment of it: And in *Scotland* not only in the *Highlands* but the *Lowlands*, that which they call the *Great-hack*, *i.e.* to be attended whereever they travel, when they pleaſe to command it, with a great train of their

(*i*) *Vita Germanorum omnis in venationibus, atque in ſtudiis rei militaris conſumitur.* (*k*) *Scuto Frameaque juvenem ornant; hæc apud illos toga, hic primus juventæ honos.* De Moribus Germ.

The *German Comites.*

(*l*) *Magnaque & Comitum æmulatio quibus primus apud Principem ſuum locus: & Principum, cui plurimi & acerrimi Comites. Hæc dignitas, hæ vires, magno ſemper electorum juvenum globo circundati, in pace decus, in bello præſidium.* Id. p. 637. *Cum ventum in Aciem, turpe Principi virtute vinci, turpe comitatui virtutem Principis non adæquare.*

(*m*) *Exigunt enim Principis ſui liberalitate illum bellatorem equum, illam cruentam victricemque frameam.* Id. 538.

Sir *Henry Spelman* derives *Vaſſal* from the old *German Geſſel, Comes, vel ſimpliciter, vel qui pro mercede ſervit.* Gloſſar. Fidelis.

(*n*) *Nec arare terram aut expectare Annum tam facile perſuaſeris, quam locare hoſtes, & vulnera mereri; pigrum quinimo, & iners videtur ſudore acquirere quod poſſis ſanguine parare.* Id. p. 538.

their Vaſſals and Tenants, eſpecially in military expeditions; is yet in uſe; and till the Law of *H.* 7. againſt Retainers, this was as much uſed by the ancient *Engliſh* Nobility.

(*o*) *Tacitus* further ſaith, concerning their *Princes*, That it was a cuſtom for their Cities, of their own accord, and Man by Man, to beſtow upon their Princes, Cattle and Corn, which is received as an Honorary Gift, and ſerves them for their Houſe-keeping; and the Princes moſt rejoyce in the Gifts of the neighbouring Nations, which are not ſent by ſingle perſons, but as Publick Preſents: *viz.* Choſen Horſes, great Armes, Horſe-trappings, and Collars or Chains, and of late, Money. Here we may note, that where *Tacitus* mentions *Civitates* he means ſome diſtinct Government or Country under one Government. For he is poſitive that the *Germans* had not ſuch places as were called *Urbes*, Cities; nor did they endure conjoyned Seats of Habitation, but did inhabit ſeverally, as a Fountain, a Field, or Wood pleaſed them, their *Cities* being only fenced Woods or Moraſſes. I might note many other things in which the *Saxons* agreed with the deſcription (*p*) *Tacitus* gives of the *Germans*, and ſome uſages we retain ſtill; but I ſhall only add two particulars more, and ſo conclude. He ſaith, that they neither went about publick or private Affairs unarmed, not only where buſineſs required, but to their Feaſts they went armed; and to drink at them a Day and Night was no diſgrace: and often at theſe were quarrels, which ſeldom paſſed without reproaches, but often with death and wounds. At theſe Feaſts they conſult, ſaith he, of reconciling Enemies, of joyning Affinities, and chuſing Princes, and for the moſt part, of Peace and War, as if at no other time, either the Mind is more open to receive ſimple thoughts, or is more warmed to great ones; yet, however, upon theſe occaſions, they unboſom themſelves, the next day they treat again of theſe matters, deliberating when they know not how to diſſemble, and firmly reſolve on a thing when they cannot err.

As to their publick Conſultations, *Tacitus* obſerves further, That of leſſer matters (ſuch as I ſuppoſe concerned not the Publick State of Affairs in War or Peace, but the particular ordering the matters of their private Juriſdictions) the Princes conſult: about greater buſineſs all, yet ſo as thoſe things, of which the loweſt ſort of the People are Judges, are firſt treated of by the Princes. By which I underſtand, *Tacitus* means by greater matters, the Conſultations about the defending themſelves againſt their Enemies, eſpecially againſt the *Romans*, where the unanimous ſuffrage of the greateſt multitude was requiſite.

By all which, it is apparent that there were ſeveral Principalities in *Germany*, and that the Souldiery made up a great part of the People: and where we read of ſuffrages, it is to be underſtood of theirs; and whatever freedom of Votes, *&c.* we read of, was principally in debating Military Affairs: and that *Germany* doth yet retain free Princes, and free Cities, though

Their Princes preſented with Gifts.

(*o*) *Mos eſt civitatibus ultro ac viritim conferre Principibus vel armentorum vel frugum, quod pro honore acceptum etiam neceſſitatibus ſubvenit: publice mittuntur electi equi, magna arma, phaleræ, torqueſque.* Idem.

They went always armed.

(*p*) *Nihil neque publicæ neque privatæ rei niſi armati agunt, tum ad negotia, nec minus ſæpe ad convivia procedunt armati.*

De reconciliandis invicem inimicis, & jungendis affinitatibus, & adſciſcendis Principibus, de pace denique ac bello, plerumque in conviviis conſultant, tanquam nullo magis tempore aut ad ſimplices cogitationes pateat animus aut ad magnas incaleſcat. Deliberant dum fingere neſciunt: conſtituunt dum errare non poſſunt. Id. 642. *De minoribus rebus Principes conſultant, de majoribus omnes; ita tamen ut ea quoque quorum penes plebem arbitrium eſt, apud Principes pertractentur.* Id. 636.

Their Conſultations.

under one Emperour, as ancient *Germany* did, is well known.

De Moribus Germanorum.

Another of their laudable Cuſtoms is thus remembred by *Tacitus*, *Inſignis Nobilitas, aut magna Patrum merita, Principis dignationem etiam adoleſcentulis aſſignant*, which I render, Great Nobility, or, the great merits of their Fathers, gives the dignity of Princes, even to their Youth. In this we may note the propagation of Gentry, through true Virtue deſerving Honour, to whoſe Memory is dedicated that Worſhip which is often beſtowed on unworthy Poſterity. This, ſaith *Seneca*, we owe to Virtues, that we do not only worſhip them preſent, but worſhip them taken out of our ſight.

Hæc debeamus virtutibus ut non præſentes ſolum illas, ſed etiam ablatas e conſpectu colamus. Senec. lib. 4. de Benef. c. 30.

Another of the *German* Laws or Uſages was, as *Tacitus* mentions, That the Wife doth not bring the Husband a Portion, but the Husband gives the Wife a Dowry.

Dotem non uxor marito, ſed uxori maritus affert. Idem.

Yet we find the Husbands ſeverity in caſe of abuſing his Bed, thus: The Husband, if the Wife prove an Adultreſs, cuts off her Hair, ſtrips her naked, and turns her out of doors in preſence of her Kindred, and drives her through the Streets, laſhing or beating her as ſhe goes along. This, as *Juvenal* ſaith, was

Tacitus ut ſupra.

Acciſis crinibus nudatam Adulteram coram propinquis expellit domo maritus, ac per omnem vicum verbera agit. Idem.

——*Ipſis Marti Venerique timendum.*

So *Antinous* in *Homer* threatens *Irus* with the chopping off his Noſe, Ears, and Privities; and *Ulyſſes* inflicts that very puniſhment upon his Goat-herd *Melanthius* for his Pimping. So in *Canutus* his Law, the Wife who took other Paſſengers aboard her, than her Husband, is doomed, ſhe ſhould have her Noſe and Ears cut off. The curious may ſee more in *Selden*.

Janus Anglorum.

Tacitus obſerves another Law, that every ones Children were their Heirs and Succeſſors, and there was no Will to be: If there be no Children, then the next of kin ſhall inherit; Brethren, or Unkles by the Fathers or Mothers. This ſeems to point out Gavil-kind, otherwiſe there had been need of a Teſtament to diſpoſe of ſomething for younger Children. So *Selden* obſerves, that till our Grandfathers time it was not lawful to diſpoſe of Land-Eſtates by Will, unleſs it were in ſome Burroughs that had ſuch priviledges, but this hindred not but they might diſpoſe by Deeds.

Hæredes ſucceſſoreſq; ſui cuique liberi, & nullum teſtamentum. Si liberi non ſunt, proximus gradus in poſſeſſione, fratres, patrui, avunculi. Idem.

Another Law he mentions, which ſhews the uſe of thoſe are called *Deadly Feuds* in the North, was that to undertake the enmities rather than the friendſhips, whether of ones Father or Kinſman, is more neceſſary.

Suſcipere inimicitias ſeu patris ſeu propinqui quam amicitias neceſſe eſt. Idem.

Yet he ſaith, thoſe do not hold on, never to be appeaſed; for even Murther is expiated by a certain number of Cattle, and the whole Family of the murdered Perſon receives ſatisfaction. So we find in our *Engliſh Saxon* Laws, Murthers were formerly bought off with Head-money, which was called *Wargild*, though one had killed a Noble-man, yea, a King himſelf, which, as I remember, was valued at 60000 *Thrimſas* or Groats, and ſo a Prince 30000, and others proportionable.

Nec implacabiles durant, luitur enim etiam homicidium certo Armentorum ac pecorum numero, recipitque ſatisfactionem univerſa domus. Idem.

Another

Another Law we find thus, The Lord impoſeth upon his Tenant a certain quantity of Corn, or Cattle, or Clothes. Here we certainly find the uſage of Country Farmholders. So yet in *Scotland*, a Gentleman of Quality, or Lords Eſtate is not computed by Annual Rent, but by ſo many Bolls of Victual. So we find in *Gervaſe* of *Tilbury*, that the Kings had payments made them out of their Lands, not in Summs of Gold or Silver, but only in Victuals or Proviſions, out of which the King's Houſe was ſupplied with neceſſaries for daily uſe, which the King's Officers accounting with the Sheriffs, reduced into many payments, *viz.* a Meaſure of Wheat to make Bread for 100 Men 1 *s.* the body of a Paſture-fed Beef, 1 *s.* a Ram or Sheep 4 *d.* for Food for 20 Horſes 4 *d.*

Frumenti modum Dominus aut pecoris aut veſtis colono injungit. Idem.

In primitivo Regni ſtatu poſt conquiſitionem Regibus de fundis ſuis non auri vel argenti pondera, ſed ſola victualia ſolvebantur. Dialog. Scaccar.

Thus far I have thought fit to pick out of *Tacitus* the manners of the *Germans*, and compare ſome of them with the *Engliſh*, *Saxon*, or *Norman* Cuſtoms, to diſcover their Conformity.

But ſince, in this account from *Tacitus*, we find no ſatisfactory teſtimony as to the power of making Laws, but that in general they uſed to meet in Conſultation about the New or Full of the Moon, where 2 (*r*) or 3 Days were uſally ſpent, and the *Turba*, or Common Body of thoſe that met, (which elſewhere he ſaith, was by hundreds) being Armed, the Prieſts commanded ſilence, and had the power of keeping Matters in order, and the Princes Authority was there, as I have noted before: I ſay, conſidering theſe things, I muſt ſeek otherwhere for clearer diſcovery; before which I will only note, that at ſuch Councils as (*s*) *Tacitus* deſcribes, Judgments were given upon offences: for he ſaith here, Accuſations might be preſented, and Capital Matters tried, the diſtinction of puniſhment * being according to the Crime: Traytors and ſuch as fled to the Enemy were hung upon Trees, but the ſlothful, unfit for War, and ſuch as are infamous for ſluggiſhneſs (as *Lipſius* will have it *Torpore* not *Corpore infames*) were drowned in Moraſſes, an Hurdle being laid upon them, and the reaſon he gives of the divers puniſhments, is, that the firſt which he calls *Scelera*, are to be ſhown while puniſhed; but the other, which he calls *Flagitia*, wicked and heinous crimes, (but particularizeth not what they were) ſhould be hid and puniſhed by Drowning; then follows, *Levioribus delictis pro modo pœnarum, equorum, pecorumque numero convicti mulctantur, pars mulctæ Regi vel Civitati, pars ipſi qui vindicatur, vel propinquis ejus exolvitur*; and that for ſmaller faults, the puniſhment was a *Mulct* of Horſes or Cattle, whereof a great part was pay'd to the King, or City, and part to him that was acquitted, or his kindred. By which we may note a Sovereignty in the Kings, or Free Cities, or People to whom theſe Mulcts were pay'd.

(*r*) *Alter & tertius dies conſultatione coeuntium abſumitur.* Id. 636.

Judgments given in their Councils.

(*s*) *Licet apud concilium accuſare quoque & diſcrimen capitis intendere.*

* *Diſtinctio pœnarum ex delicto, proditores & transfugas arboribus ſuſpendunt, ignavos & imbelles & corpore* (Lipſ. *torpore*) *infames cœno ac palude injecta inſuper crate mergunt.* Tacitus de moribus German. In ſome Places of *Germany* Drowning is yet a Puniſhment, as *Platerus* gives an Account of a Woman tied in a Sack, and caſt into the River near *Baſil*, who was found alive after being taken up at the uſual place, half a mile below where ſhe was caſt in. *Obſervat.*

But I leave theſe obſcurer times, and proceed to greater light. Therefore, for the better clearing of the Authority of the *Saxon* Kings in giving Laws to their Subjects, and the diſcovering who were the conſtituent parts of the great Councils;

Several Laws made in several Kingdoms after the declining of the *Roman* Empire.

cils; I shall first note something of the several Laws made in *Germany*, *France*, and the Northern Countries, and so proceed to some general observations of our *Saxon* Laws; and lastly, to illustrate or expound by a short Glossary, the *Saxon* Titles of Great Men found mentioned in the Councils.

Gothick Laws.

First (as the Ancientest I meet with) I will begin with the *Gothic* Laws: These *Goths* overrun *Europe*, and did not only cause great Wars and Destructions, but made great alterations in the Laws and Kingdoms. The *Goths*, according to the custom of other Northern People, used not written Laws, but their Country Customs; till (*t*) *Euridicus*, *Euric* or *Theodoric* (for by those Names he is called) *Anno Dom.* 466. made them be digested into writing: These *Levigild* (*Æra* 608) amended, and they had their fullest Vigor from the Kings *Chindaswind* and *Recaswind*; and these are used in *Spain*, and that part of *France* called *Gallia Narbonensis*, anciently *Braccata*, containing *Savoy*, *Dauphin*, *Province* and *Languedoc*.

(t) *Sub Erudico Rege, Gothi Legum instituta scriptis habere cœperunt; nam antea moribus & consuetudine tenebantur.* Isidor. Chron. Goth. Æra 504.

The *Burgundian* Laws.

The next Laws for Antiquity are the *Burgundian*. *Gundebald* or *Gundebaud*, who was made tributary to *Clouis* King of *France*, *Anno Dom.* 501. having setled *Burgundy* under his Jurisdiction, did appoint (saith (*u*) *Gregory Turonensis*) milder Laws for the *Burgundians*, lest he might oppress the *Romans*: and *Lindenbrogius* notes, That his Laws agree with the Responses of *Papinian*; though (*w*) *Agobard*, in his Book to *Lewis* the Emperor, complains of the unjustness of one branch of them, in admitting *Duel*, when Proof might otherwise be had: However here it appears they were made by his Authority.

(u) *Lib.* 2. *c.* 33.

(w) *De Impietate Duellisi examinis.*

The next are the Laws of the *Alemans*, *Baiuvarians* and *Francks*, * all which took their beginning from *Theoderic* the *First*, Son of *Clouis* the *First*, who founded the *French* Kingdom, *Anno* 511. having triumphed over the *Almains*, and being converted to Christianity, he took the Name of *Lewis*; when he was in *Catalonia* he called to him wise Men, skilled in the Ancient Laws of his Kingdom; and he himself indicting, he commanded the Laws of those Nations, according to every ones Customs, to be written; adding, rescinding and changing them according as Christian Religion required, and those which, for the ancient *Pagan* Rites, he could not alter himself, *Childebert* the *Second* begun, and *Clotharius* the *Second* perfected, and *Dagobert* the great made them better, and to every Nation concerned in them, he gave them in writing.

(x) *Spelman's Gloss. Lex Baioriorum. Lex Baiuvariorum, Baioriorum, Boiorum,* containing *Franconia*, now *Bavaria*, and *Bohemia*, according to some.

Lex Aalmannorum.

As to that part which is called the *Lex Alamannorum*, they were amended by *Clotharius* the *Second*, Son of *Chilperic*, and his Princes, *viz.* Thirty three Bishops, Thirty four Dukes, Seventy two Earls, and the rest of the People, as appears by the Title; so that this, by an Act of the King and great Council, and the former by the Kings themselves, are recorded to be appointed or made.

Lex Francorum.

As to the Law of the *Francs* (not the *Salic* Law, which is of later date) we find no more mention of them after they were

were digeſted by *Theodoric* the firſt, till the time of *Charles* the Great; who and his Son, publiſhed Laws by the Name of *Capitularies*, which *Ann.* 840. were writ by *Anſegiſus Abbas Lobienſis*, and *Benedictus Levita*; ſo that here is no mention but of the Kings and Emperors ſole eſtabliſhing theſe Laws.

Lex Longobardorum.

The *Longobards*, now *Lombards*, in *Italy* were a Colony of the *Saxons*, who were removed into *Pannonia* or *Hungary*; and by *Narſes* General to *Juſtinian*, about the year 550, were called into *Italy* to aſſiſt the Emperor againſt *Totila* King of the *Goths*; whom *Narſes* totally routed in *Italy*: and theſe *Longobards* (*y*) ſeated themſelves there, and eſtabliſhed a Kingdom, and *Rotharis* their King reduced the Laws which they held only by Uſe and Memory (being moſtly ſuch as the *Saxons* had uſed) into writing, and cauſed the Book of them to be called an *Edict*; which was about 70 years after their ſetling in *Italy*; the ſucceeding Princes *Grimoald*, *Luitprandus*, *Rachis* and *Aiſtulphus*, and after *Charles* the Great, *Lotharius* and *Pipin* added and amended them. Sir *Henry Spelman* (*z*) ſaith, that betwixt our Laws and thoſe of the *Longobards*, there is a great Agreement in the Laws, Rites, Words, and other Particulars; but ſaith, our Anceſtors brought out of *Germany* their Cuſtoms not written, but, according to the cuſtom of the *Lacedæmonians*, and the Ancient Nations of the North, retained them in their memories only.

(*y*) *Warnefridus Hiſt. Longobard. lib. 4. c. 44.*

(*z*) *Gloſſar. tit. LL. Longobard.*

Lex Ripuariorum.

In the Laws of *Henry* the *Firſt*, we find the *Ripuarian* Laws (which were made for thoſe of *Luxenburg*, *Gelderland* and *Cleves*) not only approved, but ſome of them are word for word in his Laws, as Sir *Henry Spelman* notes.

The *Salick* Law.

As to the *Salic* Law, the *Francs*, a People of *Germany*, paſſing the *Rhine*, ſubdued a great part of *Gaul*; and in the third year of *Pharamond*, four of the Nobles of the Nation reviewed all the Originals of Cauſes, according to the *Salic* Law: There are two Prologues to theſe Laws; the firſt names the four Noblemen that digeſted them; the ſecond ſaith thus, That *Anno Dom.* 798. The Lord *Charles*, the Noble (*a*) King of the *Francs*, ordained the writing of that Book of the *Salic* Law.

(*a*) *Anno Dom.* 798. *Dom. Carolus Rex Francorum inclitus hunc libellum tractatus Legis Salicæ ſcribere ordinavit.*

In the Laws of King *Henry* the Firſt, Sir *Henry Spelman* notes, That many things are taken out of the *Salic* Laws, as he inſtanceth in the 87 and 89 Chapters, where the Words are uſed, and Puniſhments are appointed *ſecundum Legem Salicam*, according to the *Salic* Law.

(*b*) *Gloſſar. Lex Anglorum.*

The *Engliſh Saxon* Laws from *Germany*.

I ſhall now ſet down ſomething in general of our Country Laws: (*b*) Sir *Henry Spelman* obſerves, That the Laws of the *Engliſh* in *Britain*, ſeem to take their Original from the *German* Manners or Cuſtoms, but he knows not who firſt introduced them. It is known, that there came into *England* upon the Invitation of *Vortigern*, the *Jutes* or *Goths*, the *Angli* or *Engliſh*, and the *Saxons*; tho all here obtained the Names of *Saxons*. The *Jutes* ſetled in *Kent*, and the Iſle of *Wight*: The *Saxons* in *Eſſex*, *Middleſex* and *Suſſex*, and ſo on the Sea Coaſt to *Cornwall*,

Angela is a Town near *Flemsburg*, a City of *Sleſwick*; perhaps our *Flamburgh* in *Yorkſhire* had its Name from ſome that inhabited that City.

Cornwall, and were called the *Weſt Saxons*: The *Angli* poſſeſſed the Eaſt and North parts, which were called *Mercia.*

The tripartite Diviſion of the *Saxon* Laws.

Thoſe of *Kent* had their Laws, but after being ſwallowed up in the *Weſt-Saxon* Kingdom, they were ſubject to their Laws; The *Angli* uſed the *Mercian* Laws, till the *Danes* over-running the Provinces of *Eaſt-England*, and of the North *Humbers*, brought in their Cuſtoms, not differing very much from the Laws they had before; from hence ſprung the three-fold Diviſion of Laws, *viz.* the (*c*) *Weſt-Saxon* Laws, the *Mercian* Laws, and the *Daniſh* Laws.

(*c*) *Weſt-Seaxna Laga, Myrcna Laga, Dene Laga.*

The firſt Laws we have an account of, were made by *Ethelbert* King of *Kent Anno* 561. and the next by *Ina* King of the Weſt-*Saxons*, who began to Reign *Anno* 712. and the next by *Offa* King of the *Mercians*, of which Laws I have ſpoke before: The *Daniſh* Laws were ſuch as were not only uſed in *Denmark*, but in *Normandy*, as well as *Norway*: which was the reaſon why *William the Conquerour* underſtanding that the *Daniſh* Law was uſed in that part where the *Danes* had ſettled themſelves, he preferred them before other Laws; becauſe his Country of *Normandy* was ſprung from the *Danes*, and *Norwegians*: and it was with much difficulty that he was perſwaded againſt impoſing them upon the whole Kingdom; ſaying, the *Danes* and *Norwegians* were as ſworn Brothers with the *Normans.* Theſe *Danes* entred about the year 790. and were at laſt overcome by King *Alfred*, and by agreement betwixt him and *Guthrun* King of the *Danes* (who governed the Kingdom of the Eaſt *Angles* and *Northumbrians*,) *Guthruns* People enjoyed the *Daniſh* Laws, which differed from the other in nothing ſo much as the proportion of the Mulcts: King *Edward* the Elder, *Æthelſtan*, *Edmund*, and *Edgar* made Laws; but from the time of *Edgar* to *Edward the Confeſſour*, the *Danes* having the principal Command, the *Daniſh* Laws moſtly prevailed. But *Edward the Confeſſour*, of theſe three Laws, compoſed one, which, ſaith the Monk of (*d*) *Cheſter*, are called the Common Laws, and to his Days were called the Laws of King *Edward.*

Daniſh Laws.

(*d*) *Lib.* 1. *c.* 50. *Edward the Confeſſor's* Laws compoſed of all.

By all I have hitherto noted concerning the Laws either made in *Germany*, *France*, *Lombardy*, *Burgundy*, *Bavaria*, or other Countries (after they came to have any eſtabliſhed Government of their own) or in *England* during the *Heptarchy*; It is apparent, whoever was Soveraign, impoſed the Laws, which as to the *Saxons* in the next Chapter I ſhall make particularly appear.

When the *Roman* Imperial Law began to be diſuſed.

That the *Roman* Laws begun to be diſuſed as ſoon as their Empire declined and was broken, is as manifeſt; for theſe ſeveral Nations by the appointment of their Soveraigns had their unwritten Cuſtoms and Laws reviſed, and according to the ſuitableneſs of them to the Government of their People, had them writ into Books, and enjoyned them to be obſerved by their Subjects.

To make it evident that the Imperial *Roman* Law was much diſuſed

diſuſed after *Juſtinian*'s time, (upon the account of other Soveraignties being eſtabliſhed, which acknowledged not that dependence upon the Empire as formerly) I ſhall offer ſomething from Mr. (e) *Selden* (who, if any other, is to be credited in this kind of reading) after I have ſaid ſomething of *Juſtinian.*

(e) Notes upon *Forteſcue*, p. 20.

Of *Juſtinian*'s Laws.

The Emperour *Juſtinian* (f) in the year of our Lord 565, by the help of *Tribonian*, Maſter, and *Exquæſtor* of the Sacred Palace, and *Exconſul*, and of *Theophilus* and *Dorotheus* Illuſtrious Men, of whoſe Skill and Knowledge in the Laws and their Fidelity in obſerving his Commands, the Emperour had manifold experience of: Although he had commanded them by his Authority and Perſwaſions to compoſe thoſe Inſtitutions, that the Subjects might not learn the Law from (g) Ancient Fables, but from the Imperial Splendor, as he calls it, deſire them: and after fifty Books of *Digeſts* or *Pandects*, and four Books of *Inſtitutions* were made, in which were expounded whatever beforetime was uſed, and what by diſuſe was obſcured, by the Imperial Remedy was Illuminated; and he had accomodated to them his fulleſt Authority, and had appointed them to be read and taught at *Rome*, *Berytus*, and *Conſtantinople*, and no where elſe: Yet the body of the Civil Law was ſo neglected, that till *Lothar the Second*, about the year 1125. took *Amalfi*, and there found an old Copy of the *Pandects* or *Digeſts*; it was in a manner wholly diſuſed. Under that *Lothar* the Civil Law began to be profeſt at *Bologna*, and one *Irner* or *Werner* made the firſt Gloſſes upon it, about the beginning of *Frederick Barbaroſſas*'s time, in *Anno* 1150. and *Bologna* was by *Lothar* conſtituted to be *Legum & Juris Schola una & ſola.*

(f) *Proœm. de Confirmatione Inſtitutionum.*

(g) *Non ab Antiquis Fabulis diſcere, ſed ab Imperiali ſplendore appetere.*
Breviter expoſitum quod antea obtinebat, & quod poſtea deſuetudine inumbratum, Imperiali remedio illuminatum eſt.
Legimus & recognovimus, & pleniſſimum noſtrarum conſtitutionum robur eis accommodavimus.

(b) *Sigon. de Regno Italiæ, lib.* 11. & 7.

This Book *Lothar* gave to the *Piſans* (by reaſon whereof, ſaith Mr. *Selden*, it is called *Litera Piſana*) and from thence it is now removed to *Florence*, where in the Dukes Palace it is never brought forth but with Torch-light, and other Reverence.

By this account we may note, That even before *Juſtinian*'s time, ſome Laws had been rather by old Traditions, which he calls old Fables, than by certain Authority received; others were by long diſuſe forgot: and after they were thus eſtabliſhed by Imperial Authority, yet the ſucceeding Barbarity of the Ages, and the new Kingdoms erected, cauſed other Laws to obtain Force, the firſt of which we find very rude. All the firſt Laws, we read of in any Nation, ſeem either ſo, comparatively to the refinedneſs of the Laws in theſe Ages; or elſe the Digeſters and Authorizers of them complain how obſcure, rude, or indigeſted thoſe were, out of which they extracted theirs.

The great Subverſion the *Saxons* made by their Conqueſt.

The *Saxons* made ſo great and univerſal a Subverſion in the State, that ſcarce any City, Dwelling, River, Hill or Mountain retained its former *Roman* or *Britiſh* name; ſo that we have leſs reaſon to expect any ſatisfactory account either of *Britiſh* Hiſtory, Polity, or Laws, when we only know where they

had Camps, Stations, or Cities, Palaces or Fortifications, or Temples, by the Coyns, Brick, teſſellated Pavements, Glaſs, Earthen, or Jett Fragments of Cups, and other Houſhold-ſtuff; or Urns and Sacrificing Diſhes, which by chance have been found in the Rubbiſh of many Towns that have been certainly fired, and totally demoliſhed; which ſufficiently diſcover the noble Structures and rich Furniture the *Romans* and *Britans* had before the *Saxon* Invaſions: Beſides which, we may conſider, not only, the continual Wars and Depredations the *Saxons* made one upon another; but that the *Danes*, like a fatal Hurricane or Whirlwind, tore up Root and Branch, every where overturning, ranſacking, burning, and deſtroying all that they could not peaceably poſſeſs.

A ſhort Gloſſary of the Names or Titles of the Conſtituent Parts of Great Councils.

Having thus far treated of the State of the *Britans*, and ſomething of the Laws in general; as a Præliminary to the better underſtanding, who are meant by the Perſons, who we find do conſtitute the great Councils, I ſhall out of Sir *Henry Spelman*, *Somner*, and Doctor *Brady*, give a very ſhort Gloſſary, referring the curious Reader to the Books themſelves.

The *Witan* or *Wites*. *Einhard* divides the *Germans* into four ſorts of Degrees, the Noble, Free-men, thoſe made free, and Servants: his words are, *Quatuor differentiis gens illa conſiſtit, Nobilium ſcilicet, Liberorum, Libertorum, atque Servorum.* Adam Brem. Hiſt. Eccleſ. c. 5.

The moſt common Words in the *Saxon* Laws that are uſed, beſides the Biſhops, to expreſs the Perſons by, (whoſe Council and Advice the Kings uſed in the making Laws) are the *Witan*, *Wites*: From *Wita*, which *Somner* renders *Optimas*, *Princeps*, *& Sapiens*, a Nobleman, Prince, or Wiſeman, from *witan* to know and underſtand. So in the Laws of King *Ina* we read *Gethungenes Witan*, a famous, noble, or renowned Wite; from *Gethungen*. So in the verſion of *Bede* by King *Alfred*, *Witum* is rendred Counſellors; ſo by *Sapientes* (when we meet with it in any Authors that render *Witan* by it,) we are to underſtand not only Judges, but ſometimes Dukes, Earls, *Præpoſiti Provoſts*, *Thegns*, the King's Officers or Miniſters: So in the Charter (*i*) of King *Edgar* to the Church of *Ely*, *Anno* 970. *Alferre*, *Egelwinc*, and *Brithnoth* are called Dukes, and *Hringulph*, *Thurferth*, and *Alfric*, are called *Miniſtri*: The firſt of which in another Charter, is called *Alderman*, and the other by the name of *Sapientes*.

(*i*) *Hiſtor. & Privileg. Eccl. Elienſis, fol.* 117. *b.*

Upon peruſal and collating ſeveral Tranſcripts of Deeds and Councils, I am of opinion, that where *Wites* or *Sapientes* are uſed for Princes, Noblemen, and great Perſonages, thoſe are to be underſtood that were called to the Kings Council, had command over Countries, as Lord Lieutenants, or were Members of the great Councils: So that they were of the moſt wiſe and knowing of the great Princes, Dukes, Earls and Barons; and where it doth not ſeem to import ſuch great Men of Birth, then it ſignifies Judges. Which as to the firſt, ſeems to be clear, by what is ſaid in the Auctuary (*k*) to the 35 Law of *Edward* the Confeſſor, where it is ſaid, There were other Powers and Dignities appointed, through the Provinces, and all the Countries, and ſeveral Shires, which are called by the *Engliſh*, *Heretoches* (in King *Ina*'s Laws, *Here Thegne i. e.* Noble Miniſters

(*k*) *Lamb. fol.* 147. *tit. de Heretochiis.* *Qui Heretoches apud Anglos vocabantur, ſc. Barones, Nobiles & inſignes ſapientes, vocati ductores exercituum, &c.*

Miniſters or Officers) and when he reckons up thoſe who were to be underſtood by this name *Heretoges*, he calls them Barons, Nobles, and famous Wiſemen called Generals, or great Officers in the Army; and as to the latter Signification, Doctor *Brady* hath ſufficiently cleared it in *Adelnoth*'s Plea againſt the Monks of *Malmsbury*, where it is ſaid, that in the Preſence of the King, *ſubtili diſceptatione a Sapientibus ſuis*, i. e. *Regis*, *audita*, where by *Sapientes* muſt be underſtood the King's Judges.

Alderman.

Alderman or *Ealderman*, was both a general Name (*l*) given to Princes, Dukes, Governours of Provinces, Preſidents, Senators, and even to Vice-Roys, as alſo to particular Officers: hence *Aldermannus totius Angliæ*, like my Lord Chief-Juſtice; *Aldermannus Regis*, *Comitatus*, *Civitatis*, *Burgi*, *Caſtelli*, *Hundredi*, &c. of whoſe Offices it is not eaſy particularly to define. This being ſo copiouſly diſcourſed of by Sir *Henry Spelman*, I ſhall refer the Reader to him.

(*l*) *Spelman's Gloſſary.*

Thane.

The word *Thane* or *Thegen* was uſed by the *Saxons* in their Books variouſly, ſometimes it ſignified a ſtout Man, Soldier or Knight; other times *Thanus* (*m*) *Regius* ſignified the Kings great Officer, a Nobleman or Peer of the Realm; other times a *Thane* or Nobleman of lower degree; ſometimes we meet with ſecular or Lay *Thanes*, other times Spiritual *Thanes* or Prieſts. Some *Thanes* were as the King's Bailiffs, Præfects, Reeves, of which Doctor *Brady* gives account in his *Argum. Antinorm.* Page 283.

(*m*) *Cyninges Thegen. Med mera Thegen. Worull Thegen. Mæſſe Thegen.* Somner. Dial.

Clergy and Laity.

In ſeveral of the Councils we find no particular orders denominated, but only a diviſion of the whole into the Clergy, and Laity. So in the Council that Sir *H. Spelman* (*n*) tells us, *Ethelbert* King of *Kent*, held 685. with *Bertha* his Queen, and *Eadbald* his Son, and the Reverend Biſhop *Auſtine*, and the reſt of the *Optimates Terræ* at *Chriſtmaſs*, having called a Common-Council of the Clergy and People: by which it is apparent that both the Clergy (*o*) and Laity there underſtood, are comprehended under the name *Optimates Terræ*, the Nobility of the Land. So in King *Ina*'s Laws (as I ſhall hereafter particularize,) the command is given to *Godes Theowas*, Gods Servant, and *eales folces*, all People.

(*n*) *Spelm.* 1. *Tom. Concil.*

Communi concilio tam Cleri quam Populi.

So King *Edmund* held a great Council at *Eaſter* in *London*, of Gods (*p*) Order, and the Secular Order, or Worlds Order, which *Brompton* (*q*) renders *Laici*, in another part of King *Edward*'s Laws. So the *Majores Regnorum* of King *Edgar* are commanded to come, and then it is ſaid, There came to *Wincheſter* the Clergy and People: thoſe were the *Majores Regnorum*.

(*p*) *Egther ge godcundra hada, ge woruld cundra.*

(*q*) *Mandavit omnibus Majoribus Regnorum, & veniunt Wintoniam Clerus, & Populus.*

Clero Angliæ & Populo univerſo.

The like was frequently uſed after the Conqueſt; ſo at the Coronation of *Henry* the Firſt, *Matthew Paris* ſpeaks of the gathering of the Clergy and all the People, and then ſaith, The Clergy anſwering him, and all the *Magnates*; and in another place, *Clero & Populo favente*, the Clergy and People favouring. Further we find in a great Council, held by the King *Anno*

(r) *Omnes Principes Regni sui Ecclesiastici & secularis ordinis.* Flo. Wigor. fol. 651. lin. 21.

1102. 2 *H.* 2. (r) all the chief Men of his Kingdom, of the Ecclesiastic and secular Order. So that *Plebs*, *Populus*, *Vulgus & Incola*, where by way of *Antithesis* or contra-Opposition they are used, do signify the Clergy and Laity, or Lay-Princes, not the common People.

After the Conquest, we meet with the Word *Regnum* sometimes, and other times *Regnum & Sacerdotium.* As to the first, the Sence is to be understood best in the Quadripartite History (s) of the Life of *Thomas Becket*, where it is said, the King called to *Clarendon*, *Regnum universum*, all the Kingdom; and then saith, To whom came the dignified Clergy and the Nobles: which *Matt. Paris* puts out of all doubt by the enumeration that he makes of all that appertained to the Kingdom, to be the Arch-Bishops, Bishops, Abbats, and Priors Installed, and the Earls and Barons.

(s) *Quadrilog. lib.* 1. *c.* 26.

So the meaning is best understood of the words in the last Chapter of *Magna Charta*, that the Arch-Bishops, Bishops, Abbats, Priors, Earls, Barons, Knights, and free Tenents, and all of the Kingdom gave a fifteenth part of their Moveables: and in other places, after the Barons, it is said, *Omnes alii de Regno nostro qui de nobis tenent in Capite*, concerning which the most Learned Doctor *Brady* hath given plentiful Proofs.

Magnates & Proceres.

By the words *Magnates & Proceres* (frequently found in the Councils after the Conquest) are to be understood the Arch-Bishops, Bishops, Abbats, and Priors for the Clergy; and the Earls and Barons for the Laity only; unless afterwards that Dukes were included. However they were used always to contra-distinguish that order from the Inferior Tenents *in Capite.*

Fideles & Liberi homines.

The *Fideles & Liberi homines*, are to be understood to signify those which were the King's Tenents *in Capite.* So we find it in a Precept of *H.* 3. *Rex omnibus* (t) *Comitibus*, *Baronibus*, *Militibus & aliis Fidelibus suis*: And when we meet in any Charter or History with *Fideles* or *Liberi homines*, the meaning will be best known from the subject Matter where they are used, and the words with which they are joyned in Construction, as Doctor *Brady* observes.

(t) *Cl.* 42 *H.* 3. *m.* 10. *in dorso.* So *Nithard*, *lib.* 4. speaking of his own time, divides the *Germans* into *Ethelings*, *i. e.* Nobles; *Frilings*, Free-men; and *Lazzos*, Servants or Slaves: Thence our *Lazie Fellow*, which we now understand *Idle.*

We meet with *Liberi homines* frequently in the Laws of the Conqueror, as *Liberi homines totius Monarchiæ Regni nostri —ut nihil ab iis capiatur nisi servitium suum Liberum*, and in another, *Ut omnes Liberi homines totius Regni sint fratres conjurati ad Monarchiam nostram defendendam*; that all the Freemen of the Kingdom be sworn Brethren, to defend our Monarchy: and these were to be ready with Horse and Arms to do the King Service according to what they ought by their Fees. And this was called free Service in respect of other base Services; for they were the Tenents *in Capite*, who were the freest of any other Subjects, though that Tenure was at last most cryed out against.

Communitas Regni.

By the *Communitas Regni*, *Universitas Regni* or *totæ Terræ*, or *Regni totius Communitas*, anciently were only understood the Barons,

Barons, and Tenents *in Capite*, or Military Men, though now it is taken for the ordinary People and Freeholders, or at beſt for Knights and Gentlemen under the degree of Barons: So beſides other pregnant proofs brought by Doctor *Brady*, that one Record of the 30 of *E.* 1. is ſufficient to clear it; where the King ſaith, That the Prelates, Earls, Barons, and the other *Magnates* for (*u*) themſelves, and the whole Community of the ſame Kingdom, gave Forty Shillings of every Knights Fee; ſo that it is clear, that the *tota Communitas Regni* were ſuch as pay'd Scutage, that is, Forty Shillings for a Knights Fee, and no others. Of theſe the Tenents *in Capite* granted and payed it firſt for themſelves and Tenents, and then their Tenents in Military Service, by Vertue of the Kings Precept, payed it to them, for ſo many Fees as they held of them.

(*u*) *Pro ſe & tota Communitate ejuſdem Regni.*

As to the *probi & legales Milites*, *probi & legales Homines*; the words did not ſignifie an honeſt, though inconſiderable Countryman; but the *probi Homines* were famous, ſtout noted Men of Renown, of great Report and Integrity. They were the beſt, chief, moſt knowing, and of the greateſt Integrity of thoſe Orders and Degrees of Men, the word was applied to. In a Precept 7 *H* 3. *Scire facient* 12 *tam* (*w*) *Milites, quam alios liberos & legales Homines*; So that theſe were Tenents in Military Service, otherwiſe what needed the words to run, Twelve as well Knights as other Free and Legal Men.

Probi & legales homines.

(*w*) *Cl.* 7 *H.* 3. *m.* 14. *dorſo.*

Therefore in the Writs for Elections of Knights for Counties, the Perſons to be choſen, are two *de diſcretioribus & legalioribus Militibus*, that is, the moſt diſcreet, juſt, knowing and reſolute Men in the Country, who (as the Law, by conſtant uſage, then required) ſerved on Inqueſts and Juries: And the Writ for Citizens and Burgeſſes, was *de diſcretioribus, legalioribus & probioribus*. Whoever deſires further Satisfaction, may find it in Doctor *Brady's Introduction to the Engliſh Hiſtory*, and his *Gloſſary*.

I now come to give an account *ſeriatim*, from all the Great Councils before the Conqueror and after, to the 49 of *H.* 3. who were the Members of them; and what Concurrence in Law-making, thoſe Members had with the Sovereign; and after the Repreſentatives of the People were brought in, what alteration it produced.

CHAP.

CHAP. XXIV.

Of the Saxon *Great Councils, of whom they conſiſted, and how, during their Government, the Laws were eſtabliſhed by the reſpective Kings.*

(a) *Ann. Chriſti* 613. Of King *Æthelbert's* Laws.

(b) *Eccl. Hiſt. lib.* 2. *c.* 5.

Tha othre god the He his Leodum thurh getheaht gefremede, eac ſwylcere rihtra doma geſetneſſe, mid ſnotera getheahte geſette æfter Romana byſena, & tha het on Engliſe awritan, tha nu oth this gehaldene ſynd.

Æthelbert King of *Kent* (who died 24 *Feb.* (a) Twenty one years after *Auguſtine* the *Engliſh* Apoſtle was ſent to preach the Goſpel to the *Engliſh*) is ſaid by venerable (b) *Bede*, among other good things which he did for this Nation or People throughout, of his counſel or purpoſe, to have framed, ſetled or eſtabliſhed, Right Judgment or Decrees with the Council of his Wiſe Men, after the *Roman* Example, and writ them in the *Engliſh* Tongue, which were holden of his Nation ſince; which in the Original of *Bede* is thus expreſſed: *Qui inter cætera bona quæ genti ſuæ conſulendo conferebat, etiam decreta illa Judiciorum, juxta exempla Romanorum cum conſilio ſapientum conſtituit; quæ conſcripta Anglorum ſermone habentur & obſervantur in eâ*, and by K. *Alfred*, are turned into the *Saxon* Language, as in the Margent: In which we may obſerve, That it was the King that *gefremede* framed or eſtabliſhed *geſette*, with the Council of his wiſe Men; which word *Council*, diſcovers where the Sovereignty lodged; and the words, *By the Example of the Romans*, do not ſo much imply that they were according to the *Cæſarean* Law, but that they might be according, or conſentaneous to the Eccleſiaſtical Laws of *Rome*, or at leaſt may comprehend both.

(d) *Dugdale Orig. Furid. c.* 4.

The (d) *Textus Roffenſis* mentions Laws made by *Hlothere*, *Eadric* and *Withred*, all Kings of *Kent*, which were recorded by *Ernulph* the Biſhop of that place, about *Anno* 760. but I have not ſeen the Manuſcript, and ſo can give no account how the Legiſlative is declared.

King *Ina's* Laws. *Lambard's* Ἀρχαιονομία, *Editionis Wheeloch, p.* 1.

(d) *Ic Ine mid Godes gyfe Weſt Seaxna Cyning, mid getheaht & mid Lære, Cenredes mines Fæder, & Heddes mines Biſceopes, & Ercenwoldes mines Biſceopes, & mid eallum minum Ealdormannum, & tham Yldeſtan Witan minre theode & eac mycelre.*

The next Laws we find, are thoſe of *Ina* King of the *Weſt Saxons*, who according to the *Saxon* Chronology lived *Anno* 681. and according to *Lambard*, begun his Reign *Anno* 712. and ended 727. In the Preface to his Laws we find it expreſſed, as in the Margent, which I render thus in *Engliſh*, (e) I *Ine*, by or with Gods gift, King of the *Weſt Saxons*, with the perſuaſion *ſuaſu* (as *Lambard* renders the word *Lære*, but more properly as *Somner* renders it) with the Advice, Counſel, Inſtruction or Exhortation (as our modern word *Lore* imports) of *Cenred* my Father, and *Heddes* my Biſhop, and *Ercenwold* my Biſhop; and with all my Aldermen (*i. e.* Princes, Dukes, Earls, Viceroys, Military Officers, Senators or Miniſters of State, as the word then ſignified) thoſe old *Wites* (*i. e.* principal or chief Noble Men, Chieftains, Governours or Wiſemen) of my Kingdom, do command, and likewiſe with *mycelre ſomnug Godes Theowena*, The great Aſſembly, Congregation or Synagogue

gogue of Gods Servants, *i.e.* the Clergy, (*f*) meditating or ſtudying the Health of our Souls, and upon the Eſtate or eſtabliſhing of our Kingdom.

(*f*) *Wæs ſmeagende be thære hæle urra ſawla & be tham ſtathole ures rices.*

That ryht Æ, (*g*) *and ryhte cynedomas thurh ure Folc Gefæſtenode & getrymmed wæron,* That right Laws and right or juſt Judgment, or Dooms of the King (or Office and Dignity of Magiſtrates, as *Somner*) be faſtned or eſtabliſhed, and trimmed, perfected or accompliſhed: That no Alderman, or under our Juriſdiction (or as probably the Compound word may be rendred, any Prince under us; *Theoden* ſignifying a Lord, Prince or Ruler; or as in the *Saxon* Chronology a King) after them, ſhall turn from, break, corrupt or change, *thæſe ure domas,* theſe our Decrees, Sentences or Ordinances.

(*g*) Not *Æw, Nuptiæ* as Dr. *Brady* obſerves, and appears in the firſt Chapter. *Gefæſtinode.*

Awendan.

Then in the Firſt Chapter it follows, *We beodæth, that ealles Folces Æ & domas thus ſynd gehealden,* We bid or command, that all our People, ſhall after hold faſt, or obſerve theſe Laws and Dooms.

From this Preface the candid Reader may obſerve, *Firſt,* That Kings are the gift of God, and that *Godes Gyffe* ſignifies the ſame with *Dei Gratia*, they are not the Creature of the People. *Secondly,* That Princes, for the better Government of their People, in the ſetling of Laws in Church and State, conſult, deliberate and adviſe with their Biſhops, Noblemen, and eminently Wiſe men of their Kingdoms, whom for their Wiſdom, they honour with public Imployments in their Dominions. *Thirdly,* That after ſuch Conſultation, Deliberation and Advice, the Sovereign eſtabliſheth and inſtituteth the Laws. And *Laſtly,* That ſuch Laws are not to be broken or infringed by the Judges or ſupremeſt Officers under the King, much leſs by the Subjects.

Obſervations on this Preface.

The next (*h*) Council I find is that of *Colchyth* in the Kingdom of *Mercia, Anno* 793. wherein are ſaid to be Nine Kings preſent, *viz. Offa,* and *Egferd* his Son, and ſeven more numbred by Sir *Henry Spelman,* Fifteen Biſhops and Twenty Dukes; and ſo in another at (*i*) *Verulam,* it is ſaid to be under *Offa,* who called together his Biſhops and *Optimates*; but theſe are only about Religious matters.

(*h*) *Spelman. Concil. vol.* 1. *p.* 313.

Other Great Councils in the *Saxon* Times of *Offa.*

(*i*) *Id. p.* 314.

So (*k*) *Kenulph* King of *Mercia*, writing to Pope *Leo* the III. begins, *Kenulphus Gratia Dei Rex Merciorum cum Epiſcopis, Ducibus & omni ſub noſtra ditione dignitatis gradu.*

(*k*) *Id. p.* 320. *Ad Annum* 801. *Kenulph.*

So at the Synod at (*l*) *Colichyth, 6 Kal. Aug. Ann. Dom.* 816. *Wulfred* the Archbiſhop being Præſident, it is expreſſed that *Cænulf* the King of the *Mercians* was preſent, *cum ſuis Principibus, Ducibus & Optimatibus.*

(*l*) *Idem, fol.* 328.

So we find a Synodal Council at *Cloveſho*, *præſidente Beornulpho Rege Merciorum,* and *Wulfrid* the Archbiſhop, the other Biſhops, Abbats, and the Nobility of all Dignities, treating concerning the profit of Eccleſiaſtical and Secular Perſons, and the ſtability of the Kingdom.

(*m*) *Idem, fol.* 332. *Beorwulph. Omniumque dignitatum optimatibus Eccleſiaſticarum ſcil. & Sæcularium perſonarum.*

That

That which I ſhall note from theſe is this, That in theſe Synodal Councils, ſometimes it is ſaid the King præſided, other times the Archbiſhop; but moſtly all the Perſons that conſtitute ſuch Councils are, the King, the Archbiſhops, Biſhops, Abbats, Priors, and the *Optimates*.

(n) *Idem, pag.* 336. *Anno* 833. *Withlafius.*

The next Council I find is called (n) *Concilium Pananglicum* held at *London*, 26 *May Anno* 833. wherein *Withlafius* King of the *Mercians*, gives ſeveral immunities to the Abby of *Croyland*, and more than once he ſaith, *volo & præcipio*, and this he ſaith he doth in the (o) preſence of his Lords, *Egbert* King of the *Weſt Saxons*, and *Æthelwulph* his Son; and before the Biſhops and the greater Noblemen of all *England* in the City of (p) *London*, where they were all gathered to take Counſel againſt the *Daniſh* Pirates, daily infeſting the Coaſt of *England*. Therefore Sir *Henry Spelman* judgeth this Council properly to be called for ſecular Affairs, and to be ſuch as we now call our Parliaments: The Witneſſes to it are the ſaid *Withlafe* the Archbiſhop of *Canterbury*, *Celnoth*, and *Eadbald* Archbiſhop of *York*; and after nine more Biſhops and three Abbats, *Egbert* and his Son *Adelwulph* ſign; and after them *Wulhard*, *Athelm* and *Herenbrith* Dukes, *Swithin* the Kings Presbyter, and *Boſa* his Secretary.

(o) *In præſentia Dominorum meorum Egberti Regis Weſt-Saxoniæ, & Æthelwulphi filii ejus coram Pontificibus, & Proceribus.*

(p) *Majoribus totius Angliæ in Civitate Londonia, ubi omnes congregati ſumus pro conſilio capiendo contra Danicos Piratas litora Angliæ aſſidue infeſtantes.*

The Laws of King *Alfred*.

Regnare { *cœpit* 871. *deſiit* 900.

But I ſhall leave theſe and come to more direct ſecular great Councils, as that of King *Alfred*; who in the firſt part of his Laws recites the Commandments and Laws by Gods appointment delivered by *Moſes* to the Children of *Iſrael*, to be obſerved; and ſome of the New Teſtament, and from that of our Saviour, *quod vobis fieri non velitis, id aliis non faciatis*, concludes that Judgment of Right ought to be given to every one, and that on (q) this one Sentence, That Man muſt bethink him much, that judgeth Right to every one: and he adds, That after the propagating of the Goſpel in *England*, as well as in other places, were gathered (for making of Laws, both for Church and State, it is to be ſuppoſed he means) Holy (r) Biſhops and other famous wiſe Men or *Wites*.

(q) *On thiſſum anum Dome, mon mæge gethencean, that he ægh-welcre on riht gedemeth.* LL. Alured, p. 21.

(r) *Haligra Biſceopa & eac othera gethungenra Witena.* Ibid.

Then in the Concluſion of the Laws about Religion, and Prefatory to the ſecular Laws, he ſaith, I *Alfred* King have gathered (s) theſe (*Sanctions*) together, and cauſed them to be written, many of them being obſerved by his Anceſtors: Thoſe that he liked (t) not, with the Council of his *Wites*, he rejected; and thoſe he liked, he bid or commanded to be holden; and concludes, *Ic tha Ælfred Weſt-Seaxna Cyning, eallum minum Witun thæs geeowde, & hi tha cwæthon that him that licode eallum to healdenne*; which thus I render: I *Ælfred* King of the *Weſt-Saxons*, ſhowed theſe to all my *Wites*, *i.e.* Nobility or wiſe Men; and they ſaid they liked them to be holden.

(s) *Thæs togæder gegaderod & awritan bet.*

(t) *Tha the me ne licodon Ic awearp mid minra witena getheat, & on othre wiſan bebead to beoldanne.* Ib. p. 22.

Obſervations on theſe Laws.

In this we may obſerve, That the King ſpeaks in the ſingle Perſon, that he collected, choſe and rejected, and (as in the ſame place he adds) ſince it would be raſhneſs to appoint all his own Laws, it being uncertain what credit thoſe might find with

with Poſterity, which he liked: Therefore whatever in the Laws of *Ines* his *Mæges i. e.* Kinſman, or of *Offa* King of the *Mercians*; or of *Æthelbyrhtes*, who was the (*u*) firſt King of the *Engliſh* that was baptiſed: Thoſe that he (*w*) thought righteous, he thoſe here gathered, and the other he rejected, paſſed by, or pretermitted, *forlæte*. It may be alſo noted, That he calls the Noblemen, whoſe Advice and Aſſent he uſed, *his Wites, minum Witum.*

(*u*) *The æreſt fulwiht underfeng on Angel cynne.* Ibid.

(*w*) *Tha the me rihtoſt thuhton, Ic tha her on gegaderod.*

The next material Illuſtration of the Conſtituent Parts of the Legiſlative Power, is found in the (*x*) League betwixt *Alfrid* and *Guthrun*, King of the *Danes*; which, though not properly a great Council, yet at leaſt much reſembled it; ſince it ſaith, This is the League of Peace which *Ælfred* and *Guthrun* Kings, and all the *Engliſh Wites*, and alſo thoſe which inhabited *Eaſt England*, have declared or (*y*) eſtabliſhed, and with Oath faſtned or confirmed; *For hi ſylfe & for heora gingran*, for themſelves and for their Off-ſpring; *ge for geborene, ge for ungeborene*, born and unborn, that care (ſaith he) for Gods Mercy or ours. *The Godes miltſe recce, oth-the ure.*

(*x*) *Idem*, p. 36.

(*y*) *Gecweden habbath & mid Athum gefæſtnod.* p. 36.

In this it is to be noted, That *Alfred* having ſo beat the *Danes*, that they gave him Hoſtages, either to go out of the Kingdom, (*z*) or turn Chriſtian: This *Guthrun* (otherwiſe *Gurmund*) with Thirty of his Nobles, and almoſt all of his People were baptized; and *Alfred* received him at the Font as his Son, and called him *Ethelſtan*: Alſo the Subjects of *Guthrun* are called the *Eaſt-Engliſh* Nation, and the Nobility are called the *Wites* of the *Engliſh* King, *Angel cynnes witan*: And *Laſtly*, that the Oath or firm Contract was Obligatory to the preſent Age, and to Poſterity; if they expected the Mercy or Compaſſion of God or the King; by which we may judge what value they had then for an Oath; ſo that this might be in the nature of a great Council of the King and the *Wites*, convened for the ſurer Stability of this Peace, to take the Oath.

Obſervations on this League.

(*z*) *Jo. Picus qui vixit temp. H.* 1.

In the Laws of King *Edward* the Elder, after the Charge given to the Judges; the firſt Law begins, *Ic wille*, I will, and ſo in others; in the fourth it is thus expreſſed, That *Eadweard* the King, with his *Wites* (*a*) that were at *Exeter*, ſtrictly enquiring, by what means it might be better provided for Peace and Tranquillity, which he perceived was leſs ſtudiouſly preſerved than it ought to be, or it ſhould, which he had before commanded, That no Man (*b*) deny, ſtop or hinder others Rights. In the *Second* and *Third* Chapter it is *eac we cwædon*, alſo we declare, pronounce or ſentence; and in the *Seventh*, *Eac ic wille*, and I will.

The Laws of *Edward* the Elder.

Regn. { *cæpit* 900. / *deſiit* 924.

(*a*) *Myd his witan tha hi Exanceaſtre wæron.* Id. p. 39.

(*b*) *That he ær beboden hæfde. That nan mon othrum rihtes ne wyrne*; as *Lambard* tranſlates it, *ne quem injuria afficiant.*

In which Laws we have none mentioned with the King but his *Wites*; and his commanding, willing, or pronouncing in the Imperative Mood, is obſerveable.

The next Laws I find are thoſe of King *Athelſtan*, which begin thus, *Ic Æthelſtane cyning mid getheahte Wulfhelmes mines Hihbiſcoopes & othra mina biſceopa bebeode eallum minum Gereaſum thurh*

The Laws of King *Athelſtan.*

Regn. { *cæpit* 922. / *deſiit* 940.

Ibid. p. 45.

thurh ealle mine rice; I *Athelſtan* King, with the advice of *Wulfelm*, my High-Biſhop, and other my Biſhops, command or bid all my Rieves, *i. e.* Præfects, of what degrees ſoever, to pay Tithes, *&c.* And this he commands (*c*) his Biſhops, his Aldermen, and *Præpoſiti* (who were the Judges in the County-Courts) to do the ſame.

(*c*) *Et that Ilce gedo eac tha Biſceopas heora gewhylcra & eac mine Ealdormanna & Gereafa.* Ibid. p. 45.

Although in this Preface there be no mention that he uſed any advice but of the Biſhops, yet the Concluſion of Twenty ſix Chapters of Laws, is in theſe words, *Ealle this wær geſetted on tham miclan Synoth æt Greatanleage; on tham wær ſe Ærcebiſceop Wulfhelme, mid eallum thæm Æthelum mannum & Wiotan de Ethelſtan Cyning gegadrian.* Which I render thus into *Engliſh*, All theſe were ſetled, or done, in the great Synod or Council at *Greatanlea*, in which was the Archbiſhop *Wulfhelm*, with all the Noblemen, (*Ethelum mannum*, muſt properly ſignify thoſe of the higheſt Quality, ſuch as were Princes of the Blood, and Dukes, becauſe it is diſtinct from *VViotan*, or the Wites, by which uſually Earls, and thoſe of lower Nobility, and great Officers were underſtood) which *Athelſtan* the King gathered.

Somner Verb.

In theſe Laws *We cwædon* is uſed, which I ſuppoſe is ſomething more than *Somner* underſtands by his *Cuide*, a Saying, Speech, or Sentence; and properly is, *we will.* But the abſoluteneſs of the King appears moſt in the Twenty ſixth Chapter, wherein it is expreſſed (*d*), That if any of his *Græves* do not perform theſe Commands, or be more remiſs in the Execution of thoſe he hath enjoined, he ſhall be puniſhed for his exceſs of Contumacy, and the Biſhop ſhall puniſh the Contumacy of the *Græve* or *Præpoſitus*; and his Sequel, the Puniſhment for the firſt fault ſhall be five Pounds, and the other fault his *were*, that is, the value of his Head, and the third the loſs of all his Goods, and the King's Friendſhip, *ura ealra Freondſcipes.*

(*d*) *Gif minra Gerefena gehwylce this don nylle, &c. Gylde min oferhyrnyſſe & Ic finde otherne we wille & ſe Biſceope amanige tha offer oferhyrnyſs æt thæm Gerefan the on his folgothe ſy.* P. 53.

King *Edward's* Laws, p. 57.

Regn. { *cœpit* } 940. { *deſiit* } 948.

King *Edmund* was the next of our Kings, whoſe Laws are tranſmitted to us, and they begin thus, Eadmund *cyning geſommnade mycelne ſynoth to Lundenbyrig, on tha Halgan Eaſterlicon tid*; *Edmund* the King aſſembled a great Synod or Council to *London*, on the Holy *Eaſtertide*, and the perſons ſummoned are ſtiled, *ægther ge Godcundra hada, ge worulcundra*, both Gods-kind, and World-kind, *i. e.* Clergy and Laicks.

After Six Chapters of Laws, the King ſignifies to all, old and young, That he had (*e*) conſidered with his *Wites*, Conſultation being had with *Eccleſiaſticks* and *Laicks*: and in the Laws it is often ſaid, *Thonne cwædon*; theſe we pronounce, or appoint; and ſometimes the ſingle perſon is uſed, and in other places, *us betweonan heoldan*, it is holden betwixt us.

(*e*) *That Ic ſmeade mid minra Witena getheaht gegodra hada gelæwedra.* Id. p. 58.

Here we find the Great Council ſummoned by the King, and the conſtituent parts of it to be the Clergy and Laity, and that the Laity were only the Princes, Dukes, Earls, great Officers, Military Commanders, the Kings Miniſters, *Græves*, *Præpoſiti*, *Thanes*, ſometimes denoted by the general names of *Wites* tranſlated

ſlated *Sapientes*, *Magnates*, *Optimates*, *&c.* as is every where beyond all poſſible doubt cleared by the moſt Judicious Dr. *Brady*, in his Anſwer to Mr. *Petyt*, to whoſe great collection for the proof of this point, before I proceed further, I ſhall only, *in tranſitu*, inſtance in a few.

Saxon Great Councils.

The Title of the Council of *Berghamſted* (*f*) 5 of *Withred* King of *Kent*, is, *This Synd Wightrædes domas Cantuara Cyninges*; Theſe are the Judgments of *Withred* King of *Kent*: and the perſons mentioned particularly, are the King that convened them, and *Birthwald*, *Bretone*, *Heahbiſceop*, High or Archbiſhop of *Britain*, *Gibmund* Biſhop of *Rocheſter*, and the reſt of the Eccleſiaſtick (*g*) Order of that Nation, *mid thy Herſuman Folcy* with the Military Perſons, ſuch as in after times were called, *Here-Thegni* in King *Ina*'s Laws, and *Heretoches* in the Auctuary (*h*) to the 35 Laws of King *Edward the Confeſſor*, which are there interpreted *Barones*, *Nobiles*, *Inſignes*, *Sapientes*, *Ductores Exercitus*.

(*f*) *Spelman. Concil. vol.* 1. *fol.* 194. *Anno* 697. *Withræd.*

(*g*) *Ælc had ciricean thæte mægthe acmodlice.*

(*h*) *Lamb. tit. Heretoch. fol.* 147.

So in the Council at *Cloveſho*, 3. *Cal. Nov. Anno Dom.* 824. under (*i*) *Beornwulph* King of the *Mercians*, beſides the Archbiſhop *Wulfred*, and ſeveral Biſhops and Abbats, are enumerated only *Beornoth*, *Eadberht*, *Sigered*, *Egberht*, *Eadwulf Alheard*, *Mucel*, *Uhtred* and *Ludica*, under the ſtile of *Duces*, *Bynna Frater Regis*, *Aldred Thelonius*.

(*i*) *Spelm. Conc. vol.* 1. *fol.* 333. *Beornwulph.*

So in the Great Council at *London*, (*k*) 26, *May Anno* 833. the Title is, *Preſidentibus Egberto Rege Weſt*-Saxoniæ, *Withlafio Rege Merciorum*, *utroque Archiepiſcopo*, *cæteriſque* Angliæ *Epiſcopis*, *& Magnatibus*; and beſides the Biſhops and Abbats that ſubſcribe, we find theſe, *Adelwulphus filius Regis Weſt*-Saxoniæ, *Wulhardus Dux*, *Athelmus Dux*, *Herenbrithus Dux*.

(*k*) *Idem, fol.* 336. *Egbert.*

So in the Council at *Kingsburie*, *Anno* 851. under *Bertulph* King of the *Mercians*, it is ſaid to be, *præſentibus Ceolnotho Dorobernenſi Archiepiſcopo*, *cæteriſque Regni Merciæ Epiſcopis*, *& Magnatibus*, and the Subſcribers are beſides the Biſhops and Abbats, *Ermulphus Dux*, *Oſrithus Dux*, *Serlo Comes*, *Elbertus Comes*, *Huda Comes*, *Oſlat Pincernæ Regis*.

Bertulph. *Idem, fol.* 344.

I have upon this occaſion inſtanced in theſe few of the Ancienteſt, to clear who the Perſons were, according to their Orders, Ranks, and Degrees, that conſtituted theſe Great Councils, and ſhall now proceed to other *Saxon* Councils ſucceeding.

King *Eldred*'s Great Council.

Eldred King of all *England* gave the Monaſtery (*l*) of *Croyland* to Abbat *Turketul*, and his Monks, by his Charter dated *in Feſto Nativitatis B. M. Virginis Anno Dom.* 948. *cum univerſi Magnates Regni per Regium edictum ſummoniti*, when all the great Men of the Kingdom were ſummoned by the Kings command, and then more particularly he divides them into the two Orders of Eccleſiaſticks and Laicks thus: *Tam Archiepeſcopi & Epiſcopi & Abbates*, *quam cæteri totius Regni Proceres & Optimates* Londoniis *conveniſſent*, *ad tractandum de negotiis publicis totius Regni*.

(*l*) *Ingulphi Hiſt. fol.* 477.

Some may object, That *Ingulphus* giving this account, may rather expreſs the Members, and the occaſion of it to treat of the Publick Affairs of the whole Kingdom, according to the uſage of the Age he lived in, than of the Age the Great Council was held in; which is well to be obſerved in many caſes. But in the Laws of King *Edgar* I ſhall ſhew it was then uſed in ſuch manner, to give account of the great Councils, as both his Laws, and thoſe I have hitherto mentioned of the oldeſt Date, manifeſt.

King *Edgar*'s Laws. *Lamb. Conc. fol.* 62. *Regn.* { *cœpit* } 959. { *deſiit* } 975.

The Preface to King *Edgar*'s Laws is thus: *This is ſeo gerædnyſſe the Eadgar Cyng mid his Witena getheahte geræd*; This is the Conſtitution, Act, or Decree which King *Edgar* with his Wiſemen, or Great-men hath made ready, trimmed or enacted. Then follow the three great Ends for which ſuch Councils are called, *viz. God to loſe*, to the Love, Glory, or Praiſe of God in appointing Religious Laws, *& him Sylfum to Cyneſcipe*, rendred by *Lambard*, *ad Regiæ Majeſtatis ornamentum*, or according to the ſignificancy of the Words, himſelf to make Kingly, or his own Kingſhip or Soveraignty to manifeſt; and *thirdly*, *eallum his leodſcip to thearf*; all his People or Nation to profit, or according to *Lambard*, *ad totius Reipublicæ utilitatem.*

(m) *Spelman. Concil. Tom.* 1. *fol.* 455.

The ſame King *Edgar*, (*m*) in his Charter to *Glaſtonbury*, concludes it thus, *Hanc privilegii paginam Rex* Edgarus XII. *Regni ſui Sacro Scripto apud* Londoniam *communi Concilio Optimatum ſuorum confirmavit.* So that it appears, this was in the preſence of a great Council, and the Witneſſes named are *Elfgina Regis mater*, *Edward Clito filius*, *Kinedius Rex Albaniæ*, *Mareuſius Archiparata*, *Admiral.*

Then follow both the Archbiſhops, and ſeveral Biſhops, and Abbats, after whom the ſecular *Optimates*, *viz. Elpher*, *Oſlac*, *Ethelwine*, by the Title of *Duces*, *Oſwold*, *Eufward*, *Ethelſic*, *Ellſhie*, by the Title of *Miniſtri*, which were Officers under the King, as *Thegns*, *præpoſiti.*

(n) *Idem* 490.

In the account given of a Council held at (*n*) *Wincheſter* in this Kings Reign, thoſe preſent at it are reckoned thus, *Præſentibus Edgaro Rege cum Conjuge*, *Dunſtano Archiepiſcopo*, *Elfero Principe Merciorum*, *Ethelwino Duce Orientalium Anglorum*; and the ſame perſons called *Duces* in the foregoing Charter, *Elfwoldo ſuo Germano*, *Brithnotho Comiti*, *cum Nobilitate totius Regni.* So that none but the Nobility were preſent.

The Witneſſes to a Charter of the ſame King to the Monaſtery of *Hyde*, in *Wincheſter*, are the King, Archbiſhop *Dunſtan*, *Eadmund Clito*, *legitimus præfati Regis filius*, Edward *eodem Rege Clito procreatus*, *Ælfitheyth Regina*, *Eadgita Regis avia*; the preſent Queen hath the precedence of the Queen Dowager: Then follow ſeveral Biſhops and Abbats, after whom the Lay-Peers, *viz. Odgar*, *Athelſtan*, *Athelwin*, *Dukes*, *Æthelweard*, *Ælfweard*, and *Walſton*, *Miniſtri.*

It

It is to be noted, That moſt do make the Laws of King *Edward the Confeſſor*, to be principally a revival of King *Edgar's* Laws, mixing ſuch as *Canutus* had adjoyned to them.

The Preamble to the Laws of King *Ethelred* runs thus; *This is tha gerædnyſs the* Ethelred *Cyning & his Witan geræddon, eallum Fole to fritherbote*; Theſe are the Conſtitutions King *Ethelred* and his *Wites* have enacted, all his People to mulct for the breach of Peace. Theſe were enacted at *Woodſtock* in *Mercia* after the *Engliſh* Laws.

The Laws of *Ethelred, fol.* 88. *Regn.* { *cœpit A.*979. *deſiit* 1016.

The general Council of (o) *Ænham*, called *Panauglicum*, is ſaid to be *Hartatu Ælfeagi Dorobernenſis & Wulſtani Eboracenſis Archipræſulum ab* Æthelredo *Rege edictum, accerſitiſque Epiſcopis & univerſis* Anglorum *Optimatibus in die Pentecoſtes celebratum*; and the *Saxon* Title of it is, *Be witena gerædneſſa*, rendred *Sapientum decreta*; In the concluſion of the Latin Copy of them, this is added, *Hæc itaque legalia ſtatuta, vel decreta in noſtro Synodali Conventu a Rege* (p) *magnopere edicta cuncti tunc temporis Optimates ſe obſervaturos fideliter ſpondebant.*

(o) *Spelman. Concil. vol.* 1. *fol.* 510. The Council of *Ænham* under King *Æthelred.*

(p) *Idem, fol.* 529.

Sir *Henry Spelman* gives ſeveral reaſons why this may be called a General Council, becauſe it contains Secular Laws as well as Divine; and here we have expreſly ſaid, it was at *Pentecoſt*, one of the ſet times for ſuch Councils; and it was by the King's Summons, and the Clergy and *Optimates* conſented.

In the Charter of the Priviledges, granted by King (q) *Ethelred* to the Church of *Canterbury*, after the Subſcription of the King, the Archbiſhops, Biſhops, and Abbats, theſe are ſubſcribed, *Ælfric, Elfhelm, Leoffwin, Leoffig Ealderman*, which in the Latin verſion are ſtiled *Duces*. *Æthelmer mines Alaffordes diſcthen*, tranſlated *Domini mei dapifer, verbatim, Diſh Thegne* or *Thane*. *Byrhtric Cynges Thegen, Miniſter Regis, Leofric Hrægel Thein, rei veſtiariæ Miniſter*, Maſter of the Wardrobe, *Syward Cynges Thegen et Ræde, Miniſter Regis & a Conciliis*, Secretary or Counſellor, the reſt only mentioned *Gewitnys*, and in the *Latin* Charter of the ſame (which we may imagine was the Original) theſe *Thegnes* are called *Miniſtri*, and ſo are theſe following, *Ordulf, Eadric, Ethelric, Leofric, Sigeræd, Wulſtan Senex, & Juvenis, Lyſing, Leoffian.*

(q) *Spelman. Concil. vol.* 1. *fol.* 507, 508. *Anno* 1006.

Æt ſuman is added, but neither *Lambard* nor *Somner* interpret it.

The Preface to the Laws of *Canutus* is conceived in the ſame Words, as that of King *Edgar's*, only he is ſtiled *Cnut Cyning ealles Englandes Cyninge & Dena Cyning, & Northrigena Cyning*; King of all *England*, King of *Denmark*, and *Norway*, they were Eſtabliſhed at *Winchester on thæm Halgan Mid-winter Tide*, i. e. at *Chriſtmaſs.*

The Laws of *Canutus, fol.* 97. *Regn.* { *cœpit A.*1016 *deſiit* 1035

The Preface to his Laws in Sir *Henry* (r) *Spelman* is conceived in theſe words. *This is thonne ſeo worldcunde gerædneſs, the Ic will midminan Witenan ræde, the man heald ofer eall Engla-land*; Theſe are the Worldly Conſtitutions, that I will with my Wites Advice, that Men hold all over *England.* In moſt of the Chapters it is ſaid, *we læroth*, we teach, *we beodath*, we bid or command, *we forbeodath*, we forbid; and in the Concluſion,

(r) *Concil. Tom.* 1. 552.

sion, it is in the single Person of the King; *nu bidde Ic georne & on Godes naman beode manna gehwylcne*; Now I command all, and bid every Man in God's Name.

(s) *Idem, fol.* 562. The Preface to the Latin version of them saith, *Hæc* (s) *sunt Instituta Cnudi Regis Anglorum, Dacorum, Norwegarum, veneranda sapientum Concilio ejus, ad laudem & gloriam Dei & suam Regalitatem, & commune commodum habita in sancto natali Domini apud Wintoniam.*

(t) *Monast. Ang. vol.* 1. *fol.* 295. *col.* 1. *num.* 30. So we find that *Anno* 1024. When (t) *Canutus* drove the Clerks living dishonestly from the Church of St. *Edmund*, and placed Monks there; it is said he did it *cum consilio Archiepiscoporum, Episcoporum & Optimatum.* So in another Council it is thus, *Ego Cnut Rex totius Albionis, cum Concilio Archiepiscoporum, Episcoporum, Abbatum, Comitum, omniumque fidelium elegi sanciendum.* By the word *fidelium* here, is meant the *Thegne* or lesser Nobility, as Doctor *Brady* fully proves in his Glossary, and elsewhere, *Anno* 1032. He grants Priviledges to *Glastenbury*, (u) which he doth *consensu Optimatum meorum*, with the consent of his Nobles; yet he useth the words *concedo & prohibeo* in the single Person, to denote from whose single Authority all concessions flowed.

(u) *Spelman. vol.* 1. *Concil. fol.* 537.

(w) *Gest. Regum, lib.* 2. *c.* 11. Of this *Canutus*, (w) *Malmsbury* saith, that he commanded to be observed for ever all the Laws of ancient Kings, especially those made by King *Ethelred* his Predecessor, under (x) the penalty of the Kings Fine, to the observing of which, he saith in his time it was sworn under the name of King *Edwards* Laws, not that he had appointed them, but had observed them.

(x) *Sub interminatione Regiæ mulctæ perpetuis temporibus observari præcepit.*

(y) *MS. Burgi Sancti Edmundi*; *Spelman. Conc. vol.* 1. *fol.* 534. It is of latter time (y) recorded, that *Canutus* in the fifth Year of his Reign, calling together all the Prelates of his Kingdom, *Procereſque ac Magnates, Wulstan & Adelwode*, the Archbishops, and other Bishops, seven Dukes, and seven Earls, and divers Abbats of Monasteries, *cum quamplurimis gregariis Militibus ac cum populi multitudine copiosa*, who were personally present, *Votis Regiis unanimiter consentientibus præceptum & decretum fuit.*

Sir *Henry Spelman* saith, That this Manuscript must be writ towards the latter end of *Henry* the Third's Reign, if not after, because it useth the word *Parliament*, and discourseth of the Constitution of Parliament, as in that Age, not as the great Councils in *Canutus* time were; which I note that it may be observed upon how slender Antiquities Sir *Edward* (z) *Coke* relied.

(z) *Præfat.* 4. *Report.* King *Edward the Confessor's* Laws. From what *Malmsbury* observes of these Laws of *Canutus*, we may conclude, that whereever the Laws of King *Edward* the Confessor are mentioned in after Ages, these Laws of *Canutus* must be understood; and that it is a fruitless Enquiry to search for any other than those which *Hoveden* and *Ingulphus* give us, as confirmed by *William* the Conqueror: therefore I shall referr the Inquisitive Reader to the Authors, and Sir (a) *Henry Spelman*, and Mr. *Selden.*

(a) *Concil. vol.* 1. 619, 625.

I ſhall therefore only note who were the conſtituent Parts of the great Councils in his time. That convention at *Chriſtmas* the Twenty fifth of his Reign, as Sir *Henry Spelman* (*b*) hath publiſhed it, was, *Præſentibus* Edwardo *Rege & Confeſſore, Edgitha Regina, Stigando Archiep. Cant. Eldredo Archiep. Ebor. cæterisque Angliæ Æpiſcopis, Abbatibus, Capellanis, Regis Comitibus, Miniſtris (ſeu Thanis Regis) & Militibus qui in Chartarum ſequentium ſubſcriptionibus nominantur.* Then follows the ſecond Charter to (*c*) St. *Peters* of *Weſtminſter*, where after the Biſhops and Abbats we find the Subſcriptions of *Raynbaldus* the Chancellor, and *Harold, Edwin, Leofdwyn* and *Guden* are titled Dukes. *Ergar, Kendus, Wygodus, Robertus, Ednothus* are called *Miniſtri*, then I ſuppoſe according to the Title, the Knights, *Agelnodus, Walfricus, Sywardus, Godricus.*

(*b*) *Idem, fol.* 627.

(*c*) *Id.* 631.

To the third Charter, (*d*) when he dedicated St. *Peter's* Church, *Anno* 1066. there are theſe more added to the Lay-Nobility, (beſides *Osbern, Peter*, and *Robert* the King's Chaplain, who are placed next after the Chancellor, before the Dukes) *Gud Comes, Marheſas comes, Radulphus Miniſter, Agelnodus Miniſter*, and beſides that, *Wulfric, Syward* and *Godrich* in the aforeſaid Charter, are called here, Knights, there are added *Colo* and *Wulſward*, Knights; and the Concluſion of all is, *Omnes conſentientes ſubſcripſimus.* So that here may be noted the uſe of the Subſcriptions of the Noblemen to the King's Charters, which then were only by the mark of a Croſs, and in after times by their Seals, to thoſe we call Acts of Parliament, as hereafter will be ſhown.

(*d*) *Id.* 636.

As to King *Edward's* Laws, and their Confirmation by the *Conqueror*, and the Additions and Amendments, ſee Dr. *Brady, fol.* 254. *Argum. Antinorm.* 296, 298, 299.

As to the Parallel betwixt the *Saxon* and *Norman* Laws, ſee his Preface to the *Norman* Story.

Having thus treated of the General Councils, and ſuch like Conventions, under the *Saxon* and *Daniſh* Kings, I ſhall paſs to the *Norman* Kings, and ſo deſcending to the preſent Age, ſhow the conſtituent Parts of the great Councils and Parliaments, and by what variety of Expreſſions in the gradual Progreſs of the reſpective Kings Reigns, the Soveraigns enacting of Laws was exhibited: only before I enter, I cannot but take notice that Mr. *Selden* (by what compliance I know not, with the mode of his time) calls thoſe which we make conſtituent parts of the great Councils of the *Saxon* times, *Cuſtodes*, and ſaith, he ſcarce meets with any of theſe Guardians of the Laws, different from theſe Lawmakers. Yet he brings no Repreſentatives of the Commons; for he makes them the King, the Lord High-Conſtable, the Chancellor, the Treaſurer, the Alderman of *England*, the Aldermen of Provinces, and the Graves. I cannot but wonder that he ſhould not at leaſt give ſome hint what difference there was betwixt the King and his Græve, in the point of Law-making. Surely he knew the Conſtitution of the great Councils as well as any, but being a Sitting Member in that long Parliament, was in that Particular tainted, *per contagionem uvaque livorem deducet ab uva.*

Ab his vix alios, ante Saxones, comperio Cuſtodes, ſub eis varie partitos, &c. Explent numerum Rex, Conſtabularius, Cancellarius, Theſaurarius, Angliæ Aldermannus, Aldermannus Provinciarum & Gravii. Janus Angl. p. 40.

CHAP.

CHAP. XXV.

Of the great Councils of the Norman *Kings, 'till the end of the Reign of King* John.

WHAT Changes *William* the *Conqueror* made in the Government, how he brought in the Feudal Laws of *Normandy*, and many other Alterations, Doctor *Brady* hath proved at large in his *Argumentum Anti-Normanicum*, and the Preface to his *Complete History*; so that I shall touch very little upon that Subject.

(a) *Præfatio ad LL. Willielmi primi, pag.* 155. *Edit. Wheeloch.* Three things the Conqueror designed.

The Conqueror (saith the learned Sir (a) *Roger Twysden*) having obtained the Kingdom by dint of Sword, and knowing that no Empire is firmly established by Arms without Justice, applied his mind to three things: *First*, That he might have a sufficient Military Force: *Secondly*, That he might gratifie his *French* and *Norman* Adventurers; yet so as the *English* might not by over much severity, be instigated to rebel: And *Thirdly*, That the Husbandmen might live as Servants, and to perform the Drudgery, but not to be wholly extirpated.

(b) *Lib.* 4. *p.* 523. About his Militia and Revenue.

As to the *First*, He disposed the *Militia* so as (b) *Ordericus Vitalis* tells us it was reported, That he could expend 1600*l.* and 30*s.* three Half-pence, *Sterling* Money, every day, besides the Presents, Fines for remitting of Punishments upon Transgressions of the Laws, and many other ways whereby his Treasury was encreased; and he made the Kingdom be surveyed, and all his Tributes or Revenues, as in the time of King *Edward*, he made be truly described: His Lands he so distributed to his Soldiers, and disposed them so, that in the Kingdom of *England* he had 60000 Horsemen, which he could with great readiness call together; therefore in the 58 Law ascribed to him, and which is in the Red Book of the *Exchequer*, it is thus expressed; We (c) appoint and firmly command, that all the *Liberi Homines* (such as held in Military Service, to whom he had distributed all the Lands of the *English*, except what he kept in his own Possession; as in all Authors that treat of such matters is most evident) of his whole Kingdom, should be sworn Brothers to defend and manfully preserve his Monarchy and the Kingdom, according to their Power, against all Enemies, and keeping entire the Peace and Dignity of his Crown, and for the executing of right Judgment and Justice constantly, in all ways according to their Power, without Deceit or Delay. I have inserted this at large, because it seems the Primary Law, upon which his Government was established; and it seemeth to me to be the Substance of the Oath of Fealty, that all the Subjects which held *in Capite*, were to take; or that the same Oath was to the same ends and purpose. This Law is said to be made in the City of *London*.

Fiscos.

Disposed the Lands in Military Service.

(c) *Statuimus etiam & firmiter præcipimus, ut omnes liberi homines totius Regni nostri sint fratres conjurati ad Monarchiam nostram & ad Regnum nostrum pro viribus suis & facultatibus contra inimicos pro posse suo defendendum & viriliter servandum, & Pacem & Dignitatem Coronæ nostræ integram observandam, & judicium rectum & justitiam constanter & omnibus modis pro posse suo & sine delatione faciendam.* Fol. 171.

But

But without doubt it was much according to the (*d*) uſage of *Normandy*, eſtabliſhed by *Rollo*; and what had been practiſed by the *Francks*, when they conquered the *Gauls* in the declining of the *Roman* Empire, who diſtributed their Lands among their Soldiers, to whom was reſerved the Dignity of Gentlemen, and the Management of Arms; and the uſe of them taken from the Ancient *Gauls*, who were called *Roturiers*; and they were only permitted to manage the matters of Huſbandry and Merchandice.

(*d*) *Monſieur Berault. Cuſtom. Norman. fol.* 86.

So the Conqueror gave to ſome of his Followers (*e*) whole Counties, to ſome two or three or more Counties, with a great Portion of Land; to others, Hundreds, Mannors or Towns; who parcelled them out to their Dependants and Friends, 'till at laſt (though the *Saxons* moſt frequently held their own Eſtates of thoſe new Lords, and by new Titles from them) ſome Soldiers and ordinary Men had ſome proportionable Shares for their Services, though upon hard Conditions; poſſeſſing them for the moſt part, as Feudatories, and according to the Rules of the *Feudal* Law, which, as it was the Law for the moſt part in *Normandy*, as to Poſſeſſion and Tenure; ſo was it in *England*, until by the Indulgence of Uſurpers, as well as of lawful Sovereigns, to the great Men, and of them to their Tenents and Followers, their Tenures became more eaſie, and were changed into Inheritances, both Free and Bond. So by Compact or Agreement, betwixt kind and favourable, as well as indigent Lords and ſerviceable Tenents, as alſo by the Introduction of the uſe of the Canon or Imperial Law; the Rigor of the *Feudal* Law was abated, and received ſeveral Alterations and Amendments, by flux of Time, and eſpecially by Acts of great Councils or Parliaments, and the Neceſſities or Indulgence of Princes: So that inſtead of more rigid Tenures, the ſoft ones of Fee-ſimple, in all its kinds, by Deed, or Feofment, or inheritable and qualified Copyholds, were introduced.

(*e*) *Brady*'s Preface to *Norm.* Hiſtory, *p.* 159.

Of the Feudal Law, and its Mitigation. So *Matt. Paris* ſaith, *Epiſcopatus & Abbatias omnes quæ Baronias tenebant, & eatenus ab omni ſervitute ſeculari libertatem habuerant, ſub ſervitute ſtatuit militari.*

As to the ſecond Particular concerning *William* the Conqueror's ſetling Laws for the equal Government, both of the *Normans* and *Engliſh*; I ſhall firſt give an account out of (*f*) *Hoveden*, what theſe were and how they were procured: He ſaith, That the *Daniſh* Laws being underſtood by the Conqueror to be uſed in *Norfolk*, *Suffolk* and *Cambridg-ſhire* (others (*g*) add the *Deirans* and the *Iſles*) concerning Forfeitures, he preferred them before the other Laws of the Kingdom, and commanded they ſhould be obſerved; and gives the reaſon for it, that his and the Anceſtors of moſt of the Barons of *Normandy*, were come from *Norway*, therefore the Laws of the Danes ought to be preferred before thoſe of the *Britains*, *viz.* of the *Engliſh* and *Picts*: Which, ſaith my (*h*) Author, being heard by the great Men of the Country (who had, as hereafter I ſhall ſhow, been appointed to revize the Laws) they all were very ſorrowful, and unanimouſly intreated him, that he would permit them to have the Laws proper to themſelves, and their ancient Cuſtoms, under which their Fathers lived, and they

Of the Conqueror's Laws.

(*f*) *Parte poſteriori, fol.* 346.

(*g*) *Chron. Lithf.* See for the Conqueror's Charter and Laws, Dr. *Brady, fol.* 17, 252, 254, 258, 298, 249.

(*h*) *Quo audito mox univerſi compatriotæ, qui leges edixerant, triſtes effecti, unanimiter deprecati ſunt quatenus permitteret leges ſibi proprias & conſuetudines antiquas habere.* Id. num. 10. Hoveden, fol. 347. num. 1.

were born and bred under; for that it would be very hard for them to receive unknown Laws, and to judge of those things they understood not. But finding the King unwilling to be drawn to consent, they follow on their suit, praying for the Soul of King *Edward*, who bequeathed him his Crown and Kingdom, whose Laws they were, that they might not have the Laws of strange Nations imposed on them; but he would grant them the Continuance of their Countries Laws: To which intreaty of his Barons (after Counsel taken) my Author saith, he acquiesced; and from that day the Laws of King *Edward* were of great Authority and Esteem throughout *England*, and were confirmed and observed before other Laws of the Country.

See *Brady*'s Answer to *Argum. Antinorm. p.* 298, 299.

I cannot conceive but here were many of the *Saxon* Nobility, and Men of best Account; otherwise they could not call them the Laws their Fathers had lived under: and the *Normans* could not then know much of our Laws or Speech; but this was before he had subdued all fully.

Our Author further notes, That these were not the proper Laws of King *Edward*, but of *Edgar* his Grandfather, which had been little observed for 68 years, as in one place, and 48 years in another; he saith, by reason of the *Danish* Invasions, *&c.* and being revived, repaired and confirmed by King *Edward*, were called his Laws.

(*i*) *Anglos Nobiles Sapientes & sua lege eruditos.* Id. fol. 348. Spelm. Concil. tom. 1. fol. 619.

The Account the Chronicle (*i*) of *Lichfield* gives, is this, That King *William*, in the fourth year of his Reign at *London*, by the Counsel of his Barons, made to be summoned through all the Counties of *England*, all the Noble Wisemen, and such as were skilled in their Law, that he might hear their Laws and Customs; and then gives an account how he approved of the *Danish* Laws used in *Norfolk*, *&c.* But afterwards, at the Intreaty of the Community of the *English*, he yielded to grant them King *Edward*'s Laws. Before I proceed any further, I cannot but note, that what *Hoveden* calls *Compatriotæ* here, is called *Communitas Anglorum*; and in both of them afterwards it is called *Concilio Baronum*; by which we may know who these *Compatriotæ* and this *Communitas* were, *viz.* the Barons or great Men. Our Author proceeds, That by the King's Precept, out of every County of *England*, Twelve Wisemen were chosen, who were enjoyned an Oath before the King, that according to their utmost they should discover the establishments of their Laws and Customs (*k*) going in a strait Path, neither declining to the right or left Hand, omitting, adding, or prevaricating nothing; and *Aldred* Archbishop of *York*, who crowned King *William*, and *Hugh* Bishop of *London*, by the King's command, writ the Laws which the said sworn Persons did produce: But it is to be noted, that this Chronicle of *Lichfield* is of a later Date than other Writers; and the Laws in it differ from those in *Ingulphus*.

Concerning the Kindness the Conqueror pretended in his first four Years, and his Rigour after, see at large Dr. *Brady*, in his Answer to the *Argumentum Antinormanicum*, especially *p.* 260. and 299.

(*k*) *Ut quoad possent recto tramite incedentes, nec ad dextram nec ad sinistram divertentes, nihil addentes, nihil prævaricando mutantes. Omnia quæ prædicti jurati dixerunt.*

The next Testimony is that of (*l*) *Ingulphus*, who tells us, That he brought from *London* to his Monastery, *i.e. Croyland*, the Laws of the most just King *Edward*, which his Lord, the famous King *William*, willed to be Authentic and Perpetual, and had proclaimed under the severest Penalties, to be inviolably kept through the whole Kingdom of *England*, and commended them to his Justiciaries, in the same Language they were set forth in, *&c.* of which I shall say something below. The

(*l*) *Circa finem Hist. fol.* 519. *num.* 36. *Leges æquissimi Regis Edwardi quas Dom. meus inclitus Rex W. authenticas esse & perpetuas, &c. proclamarat.*

The Author of *Jus Anglorum ab Antiquo*, and the *Argumentum Anti-Normanicum*, and Mr. *Petyt*, in his *Rights of the Commons asserted*, have writ largely, to prove, That the Conqueror made little Innovation in our Laws; and on the contrary, the profoundly learned (*m*) Doctor *Brady* hath from undeniable Records proved, that he brought in the *Feudal* Law of Tenures, and much of the *Norman* Laws; and that in his time, and for an Hundred years after, the Justiciaries or Chief Justices, the Chancellors, Lawyers, Ministerial Officers, and under-Judges, Earls, Sheriffs, Bailiffs, Hundredaries, *&c.* were all *Normans*: likewise the Military Men and Lords of Mannors mostly were such; and in his Preface to the *Norman* History, and his Answers to the forementioned Authors, every where clears it, and proves, That though the Conqueror, in the first beginning of his Reign, promised fair Matters, yet he observed no more of those Laws, than served for his own interest: Yet he also saith, That where any Relaxation of the Rigor of the *Feudal* Laws was, the benefit principally accrued to the *Norman English*, who indeed were as active as could be expected, to obtain ease to themselves, and claim the Advantage of all the favourable Laws had been used in the *Saxon* times; but they themselves were great Oppressors of those under them.

(*m*) Answer to *Petyt*, p. 14. Great Officers *Normans*.

See for proof of the whole, *Eadmer. Hist. Novel. fol.6.num.*10, 20, 30. *Ingulph. fol.* 512. *a. num.* 50.

That these Great Barons, as Tenents *in Capite*, had power to make Laws and Constitutions to bind their Sub-Feudataries, is apparent by what *Malmsbury de Gestis Reg. lib.* 3. saith, That the Laws of *W. Fitz-Ozborn* Earl of *Hereford* remained still in force, That no Soldier for any Offence should pay above 7 *s.*

The Conqueror's Liberality to the *Normans*.

These Matters therefore being so copiously discoursed of by the learned Doctor, I shall pass that whole matter by, and come to the third Particular, Sir *Roger Twysden* notes in the Conquerors Policy, and so directly speak to the Constitutions of his Great Councils, and his Sovereignty in making or confirming Laws.

As to the third Particular; *First* it is clear that the Conqueror divided the Land among his great Men, the Officers and Soldiers: for proof of which we need no more, but the Testimony of *Gervase* of (*n*) *Tilbury*, who saith, That after the Conquest of the Kingdom, and just subversion of the Rebels, when the King himself and his great Men had viewed and surveyed their new Acquists, there was a strict enquiry made, who there were, that fighting against the King, had saved themselves by flight: From these and the Heirs of such as were slain in Fight, all hopes of possessing either Lands or Rents, were cut off: But such as were called and urged to fight against King *William*, and did not, if in Process of time they could obtain the favour of their Lords and Masters, by an humble Obedience, and Obsequiousness, they might possess something in their own Persons, without hopes of Succession, their Children only enjoying it afterwards at the will of their Lords, to whom when they became odious, they were every where forced from their Possessions.

(*n*) Black Book of the Exchequer. *Post regni conquisitionem, post justam Rebellium subversionem, --facta est inquisitio diligens qui fuerint qui contra Regem in bello dimicantes per fugam se salvaverint; hiis omnibus & hæredibus eorum qui in bello occubuerunt, spes omnis, &c. præclusa.*

Because some are prejudiced against the judicious Doctor *Brady*, for asserting the Conquerours changes that he made, I hope they will give ear to what the learned *Selden* affirms

thus, * That ſome while ſince the coming in of the *Normans*, there was not in *England*, except the King himſelf, any one who held Land in right of Freehold (as they term it) ſince, in truth, one may call all others, to a Man, only Lords in truſt of what they had; as thoſe, who by ſwearing Fealty, and doing Homage, did perpetually own and acknowledge a Superior Lord of whom they held, and by whom they were inveſted in their Eſtates. So he. Now this Fealty and Homage is now held no kind of Slavery, but then it was, as I have elſewhere noted. Let us hear what the ſame Mr. *Selden* a little below ſaith, That the Conqueror did not totally change the Conſtitution of the Laws, although we may truly ſay, according to what Lawyers diſpute, That the Engliſh Empire and Government was overthrown by him. Thus far that learned Man.

* *Ex quo eis Normannorum adventum præter ipſum Regem non fuit in Anglia is qui Allodii, ut loquuntur, Jure fundum poſſederit, cum ſcilicet aliis ad unum omnes fiduciarios probe dixeris Dominos, ſuperiorem inveſtituræ Auctorem interpoſita fide perpetuo agnoſcentes.* Lib. 2. Jan. Ang.

Probe tametſi dixeris everſum, ſecundum quod diſputant Juriſconſulti, Anglicum Imperium. Id. *Gervaſ. Tilb. c.* 23. *Oblatis vomeribus in ſignum deficientis Agriculturæ.*

Let us now return to the *Exchequer*-book, where we find, That when a common miſerable Complaint of the Natives came to the King, that they thus expoſed and ſpoiled of all things, ſhould be compelled to paſs into other Countries: At length, after Conſultation upon theſe things, it was decreed, That what they could by their deſerts and lawful Bargain, obtain from their Lords, they ſhould hold by unviolable Right; but ſhould not claim any thing from the time the Nation was conquered, under the Title of Succeſſion or Deſcent. Therefore, he ſaith, they were obliged, by ſtudied Compliance and Obedience, to purchaſe their Lords Favour.

The *Engliſh* compound with their Lords.

It is true, that in the 55*th.* Law of (*o*) *William* the Conqueror, it is ſaid, That he wills and firmly commands and grants, that all Freemen, *liberi Homines*, of the whole Monarchy of his Kingdom, may have and hold their Lands and Poſſeſſions well, and in (*p*) Peace, free from all unjuſt Exactions and Tallage, that is, extraordinary Impoſitions and Taxes; ſo as nothing be exacted or taken, unleſs their free ſervices, which of Right they ought and are bound to perform to us; and as it was appointed to them, and given and granted to them by us, as a perpetual Right of Inheritance, by the Common Council of the whole Kingdom.

(*o*) *LL. Gulielm. primi, Edit. Twyſden, p.* 170.

(*p*) *In pace libere ab omni exactione injuſta & ab omni tallagio.*

In which we may obſerve, that this was no *Magna Charta* made to *Engliſh* Men; theſe *liberi Homines* were ſuch as held in Military Service, as appears by the 58*th.* Law following; and thoſe then were *Normans*, and the Relaxations to them were, that theſe Fees were made Hereditary, which was not frequent among Feudataries in thoſe days; and the Complaints that were made after, and the amendments that *Hen.* 1. promiſed, were moſtly about the hard Taxes and Exactions.

The *Engliſh* have little Benefit by his Relaxation of the Feudal Law.

Therefore I may conclude, That the ordinary Engliſh, tho' many of them might live upon the Lands they and their Anceſtors had enjoyed, yet their Tenure was changed, and they were but Vaſſals to other Lords; 'till by little and little, by the ways I have mentioned under the firſt Heads, they acquired a Soccage Tenure, and Fee-ſimple Eſtate. Therefore the fore-

foreſaid (*q*) *Gervaſe* of *Tilbury* concludes this Obſervation, thus, *Sic igitur quiſquis de gente ſubacta, fundos vel aliquid hujuſmodi poſſidet, non quod ratione ſucceſſionis debere ſibi videatur, adeptus eſt, ſed quod ſolummodo meritis ſuis exigentibus vel aliqua pactione interveniente, obtinuit, viz.* So every one of the conquered Nation poſſeſt their Lands or any thing elſe; not that he ſhould ſeem to get it by way of Succeſſion, but by his deſerts, or by ſome Compact or Covenant made with his Lord: as it muſt be underſtood.

(*q*) *Præfat. Roger. Twyſden, fol.* 155. The *Engliſh* poſſeſs their Lands by Favour, not otherwiſe Hereditarily. So *Matt. Paris* ſaith, *Commilitonibus terras Anglorum & poſſeſſiones affluentiori manu contulit; illud parvum quod remanſerat, ſub jugo poſuit perpetuæ ſervitutis.*

The moſt induſtrious Doctor *Brady*, having on purpoſe writ ſo much of this Argument in his Anſwer to the *Argumentum Anti-Normanicum*, and, out of ſo many Hiſtorians, confirmed it in the Anſwer to the *Appendix*; I muſt refer the Reader that deſires ſatisfaction, to his Book, being loth to crowd thoſe matters which are not directly to my purpoſe: Only I cannot but note, that the reaſon why we ſo often find the ſame Lands that have been granted by a Father, for him and his Heirs, required, and had a Confirmation by the Son; was becauſe the Tenure was ſo fickle, for want of Homage or Omiſſion of Service, whereby they might be forfeited.

Brady, p. 313, 314.

I now proceed to the great Councils that I have found in the Reign of *William the Conqueror*; and ſhall begin with that wherein the Laws I have ſpoken before of, out of *Hoveden*, were made, which are agreed by all to be in the Fourth year of his Reign.

In general, we find *Gervaſe* of *Tilbury* telling us, That when the famous Subduer of *England*, King *William*, had ſubjected to his Empire the utmoſt parts of the Iſland, and by terrible examples had brought to perfect obedience the Minds of Rebels; that they might not have liberty to fall into the ſame errors for the future, he (*r*) reſolved to govern the People ſubjected to him by written Right and Law: therefore the *Engliſh* Law being propounded according to their threefold diſtinction, that is, the *Mercian* Law, *Dane* Law, and *Weſt-Saxon* Law, he rejected ſome, and approved others, and added ſuch *Tranſmarine Norman* Laws, as ſeemed moſt efficacious to defend the Peace of the Kingdom.

The Conqueror makes written Laws.

(*r*) *Decrevit ſubjectum ſibi populum Furi ſcripto legibuſque ſubjicere. Quaſdam reprobavit, quaſdam autem approbans Tranſmarinas Neuſtriæ leges, quæ ad Regni pacem tuendam efficaciſſimæ videbantur, adjecit.* Gerv. Tilb. lib. 1. c. 29.

In this account we may obſerve, That the King ſolely is ſaid to reject and approve, and to add ſuch of the *Norman* Laws as he thought fit for ſecuring the Peace of the Kingdom; and the Ingenious Dr. *Brady* thinks the 52, 55, 56, 58, 59, 62, 63, 64. are thoſe *Norman* Laws intimated.

Concerning the Oath which *Frederick* Abbat of St. *Albans*, adminiſtred to the King on the Holy Goſpel, and the Reliques of the Church of St. *Albans*, whereby he ſwore, That for the good of Peace, he would obſerve the good and approved ancient Laws of the Kingdom, which the pious Kings of *England*, and eſpecially King *Edward* had inviolably obſerved; I muſt refer the Reader to (*s*) *Matthew Paris*, to underſtand the occaſion of it; and Dr. (*t*) *Brady's* Expoſition or Commentary upon it, and how little he obſerved it. What

(*s*) *Fol.* 48. *num.* 20, 30, 40.

(*t*) *Argum. Antinorm. p.* 261.

What the Laws were that King *William* the First confirmed, Authors agree not about, as may be seen by comparing (*u*) *Hoveden*, (*w*) *Knighton* Collect. 2354. *N.* 61. *Lambard* of *Wheelocks* Edition, and *Spelman* in the First Tome of his Councils, *Fol.* 624. *Selden* (*x*) in his Notes upon *Eadmerus*, writes very suspiciously of all the Laws that are attributed to King *Edward*, except the *Crowland* Copy; judging neither *Hoveden*, *Knighton*, or the Author of the *Lichfield Chronicle* well versed in Law matters, and who writ long after *Ingulphus*, of whom he gives this Character, *Qui in hac re testium non tam facile Princeps merito dicendus est, quam solus forsan cui ut par fit credamus.*

(*u*) *Fol.* 343.

(*w*) *Fol.* 138, 149.

(*x*) *In Eadmerum, fol.* 172. *num.* 20.

The Title of the Conqueror's Laws.

The Title of the Laws properly ascribed to *William the Conquerour*, are in the Latin thus,

(*y*) *Hæ sunt leges & consuetudines quas* Will. *Rex concessit universo Populo* Angliæ, *post subactam terram. Eædem sunt quas* Edwardus *Rex, cognatus ejus, observavit ante eum.* In English thus, These are the Laws and Customs (*z*) which *William* the King granted to all his People of *England* after the subduing of the Land. They are the same which *Edward* the King his Kinsman before him observed.

(*y*) *Ces sont le Leis & les Custumes que le Reis William grantut tut le peuple de Engleterre apres le Conquest de la Terre. Ice les meismes que le Reis Edward sun Cosin tent devant luy.* LL. W. fol. 159.

In this Preface we have only to note, that the Laws are expresly said to be the Kings Grant, and the Supplemental Laws (after the 50*th*. which were found in the *Croyland* Copy) being writ in the Red Book of (*z*) the Exchequer, are by way of Charter or Grant, thus, Will. *Rex* Anglorum, *&c. omnibus hominibus suis* Francis & Anglis *salutem*, and all along the Authoritative parts expressed by *statuimus*, *volumus*, *interdicimus*, *prohibemus*, *præcipimus*, *decretum est.*

(*z*) *LL. W.* 1. *p.* 170.

The Terms used by the Conqueror in Law-giving.

The expressions Authors use concerning his Laws, whereby the absolute Soveraignty of the Conquerour in the point of Law-giving is manifested, are to be found in all those who have writ of his Life; I shall content my self with a few. *Ordericus* (*a*) *Vitalis* saith, *eamque, i. e. England*, Gulielmus *Rex suis Legibus commode subegit*; that he subdued, or rather subjected *England* profitably to his Laws.

(*a*) *Fol.* 853.

Eadmer (*b*) saith, That King *William* designing to establish in *England* those Usages, and Laws, which his Ancestors, and he observed in *Normandy*, *&c.* all Divine and Humane Things he ordered at his pleasure.

(*b*) *Hist. Nov. fol.* 6. *num.* 10, 20, 30. *Usus atque leges quas patres sui & ipse in Normannia solebant, in Anglia scribere volens--Cuncta divina simul & humana ejus nutum expectabant.* Edit. Gal. de Moulins.

The Chronology of *Rouen* saith, *Leges quas in hunc diem* Angli *observant*, *idiomate* Normanico *promulgavit*, The Laws which at this day the *English* observe, he published in the *Norman* Language.

Mr. *Camden* saith, (*c*) That *William the Conquerour*, as a token of his Victory, laid aside the greatest part of the *English* Laws, and brought in the customs of *Normandy*, and commanded Pleadings to be in *French.*

(*c*) *Britan. fol.* 109.

Brompton's Account of the proper Laws of the Conqueror.

Jo. Brompton Abbat of *Jorval* gives us an account of the proper Laws of *William the Conquerour*, which he recites under four Heads, and they are only concerning *Pleas de examine Forensi*; and

and Mr. *Selden* gives this Character of him, that he was *Diligentiſſimus rerum noſtrarum, maxime autem Legum vetuſtiorum Indagator.* Theſe are by way of Mandate, thus, W. *Dei gratia Rex* Anglorum, *omnibus ad quos ſcriptum hoc perveniat, ſalutem, Mando, & Præcipio per totam* Anglicam *Nationem cuſtodiri.*

As to the conſtituent Parts of the Great Councils in the *Conquerour's* time, in many of them we have many Biſhops names, and no others, not ſo much as the *Principes*, *Primates*, or *Magnates* in general. The Members of the Great Councils in the Conqueror's time.

Anno 1071. 5 *W.* 1. the Plaint of (*d*) *Wulſtan* Biſhop of *Worceſter* is ſaid to be ended in *Concilio celebrato in loco qui vocatur Pedreda coram Rege & Doroberniæ Archiepiſcopo, & Primatibus totius Regni*; before the King, the Archbiſhop of *Canterbury*, and the Nobility or Prime Perſons of the whole Kingdom. (*d*) *Rad. de Diceto*, *col.* 483. *num.* 30. *Concil. tom.* 2. *fol.* 4.

The Election of (*e*) *Lanfranc* Archbiſhop of *Canterbury*, about this time, or the year before, is ſaid to be thus, the Seniors of the ſaid Church electing him, *cum Epiſcopis ac Principibus, Clero & Populo* Angliæ, *in Curia Regis in Aſſumptione Sanctæ* Mariæ. Here the *Epiſcopi & Principes*, Biſhops and Princes, the *Cleri & Populus*, the Clergy and People or Laity were the ſame perſons, and only expreſſive of one another. (*e*) *Gervaſ. Dorobern. col.* 1653. *lin.* 5.

In the Charter (*f*) of *William* the Conqueror, *Anno* 1077. 11 *Regni*, after the Names of ſeveral Archbiſhops, Biſhops, Earls, and other Seniors, *Robert de Oyley*, *Hamo dapifer* ſigned it, many illuſtrious Perſons and Princes of divers Orders, ſaith the Author, being omitted: Then is added, *His etiam illo tempore a Regia poteſtate è diverſis Provinciis & Urbibus*, to this Univerſal Synod at *Weſtminſter* were called. (*f*) *MS. in Bibl. Cotton. ſub effigie Veſpaſ. A.* 19. *e Chron. Rad. de Diceto. Spelm. Concil. Tom.* 2. *fol.* 14.

In this the (*g*) *Principes diverſi Ordinis*, were the great dignified Clergy, and the Temporal Nobility, which is explained by *Florence* of *Worceſter*, ſpeaking of ſuch a like Convention. 3 *H.* 1. *Rex fuit apud Weſtmonaſterium & eo omnes Principes Regni Eccleſiaſtici & ſecularis Ordinis*: and (*h*) *Eadmer*, of this very great Council, 3 *H.* 1. ſays, *Primates Regni utriuſque Ordinis huic conventui affuerunt*; that is, The Princes or great Men of the Clergy and Laity, which were no other but the Archbiſhops, Biſhops, Abbats and Priors of the one Order, and the Dukes, Earls, Barons, and greater Tenents *in Capite* of the other; and for the expreſſion, *è diverſis Provinciis & Urbibus*, (*i*) Doctor *Brady* hath ſufficiently explained it in his Anſwer to the *Argumentum Anti-Normanicum.* (*g*) *Fol.* 651. *lin.* 22. (*h*) *Fol.* 67. *B.* 20. *Anno* 1102. 3 *H.* 1. (*i*) *Fol.* 302.

In a Charter of this King, for changing the (*k*) Canons of *Dureſm* into Monks, it is ſaid, *Hæc Charta confirmata eſt apud Weſtmonaſterium in Concilio meo*, Anno Regni 18. *præſentibus omnibus Epiſcopis & Baronibus meis.* (*k*) *Monaſt. vol.* 1. *fol.* 44. *Anno* 1084. 18 *W. Conqu.*

In the Charter of the ſame (*l*) King about ſeparating of Eccleſiaſtic Pleas from Civil, it is thus expreſſed, *William* by the Grace of God, King of *England*, to *R. Bainard*, *G. de Magnaville*, and P. *de Valoines*, and all his *Fideles* of *Eſſex*, *Herefordſhire* and *Middleſex*: Know they and all other his *Fideles* which remain (*l*) *Spelm. Concil. tom.* 2. *fol.* 14. *e MS. penes Dec. & Capit. B. Pauli Lond. A. fol.* 1, 2.

remain in *England*; that he hath (*m*) thought fit, with his Common Council, and the Council of Archbiſhops, Biſhops and Abbats, and of all the Princes of his Kingdom to amend the Epiſcopal Laws, which were neither well nor according to the command of the Holy Canons before his time, obſerved in his Kingdom. Therefore he ſaith, he commands, and by his Royal Authority enjoyns, that no Biſhop or Arch-deacon hold their Pleas any longer in the Hundred.

(*m*) *Leges quæ non bene, &c. Communi Concilio & Concilio Archiepiſcoporum & Epiſcoporum, & Abbatum, & omnium Principum Regni mei emendandas judicavi, propterea mando & Regia Auctoritate præcipio, &c.*

Remarks upon what before is laid down.

From all which we may obſerve, *Firſt*, That the Conqueror introduced the Feudal Laws of the *Normans*, and according to them diſpoſed of the Lands of the conquered *Saxons*, to be held of his *Norman* Followers, and that he brought in ſeveral others of the Laws and Cuſtoms of his Country.

Secondly, That he difficultly granted to his People the Laws of King *Edward*, and thoſe he amended at his pleaſure; and all that he either confirmed or eſtabliſhed, he did by his Royal Prerogative, uſing the ſingle Perſon in the Sanction of them; and the Imperative in the commanding or forbiding: and thoſe Laws which properly may be called his own, were by way of Charter or Mandate; and in the Councils purely Eccleſiaſtical, the King ſummoned them, as is apparent in (*n*) *Hoveden*, where he ſaith, *eodem Anno, i. e.* 1070 3 *Regni Concilium magnum in Octavis Paſchæ Wintoniæ celebratum eſt, jubente & præſente Rege* W. *&c.* of which more below.

(*n*) *Annal. Binniæ, tom.* 3. *part.* 2. *fol.* 249.

The great *Selden* notes as the Members of the Great Council in the time of the *Norman* Kings, for the Barons, ſuch as had 13 Knights Fees and a third part: His words are, *Interfuere Parliamentis ſub Normannorum tempora quotquot* 13 *Feudis Militaribus & 3 unius parte inveſtiti Barones, ab amplis prædiis ita dicti.* Jan. Ang. p. 139.

Thirdly, There are no Members of theſe great Councils mentioned, but the Archbiſhops, Biſhops and Abbats, for the Clergy, and the *Optimates* and *Principes* for the Laity.

Fourthly, That though the ſole Power of enacting Laws was in himſelf, yet he uſed the Advice of his Common Council of his Kingdom; as is expreſſed in the 55*th*. Law, thus, *Prout ſtatutum eſt eis & illis a nobis datum & conceſſum jure hæreditario in perpetuum, per Commune Concilium totius Regni noſtri prædicti*; which *Commune Concilium* conſiſted of the Biſhops, Abbats, Earls, Barons and principal Tenents *in Capite*, as is every where clear, no Commons having Vote, or otherwiſe repreſented.

(*o*) *Hiſt. Novel. p.* 6. *num.* 30. *Non ſinebat quicquam ſtatuere aut prohibere niſi quæ ſuæ voluntati accommoda & a ſe primo eſſent ordinata.*

Laſtly, (*o*) *Eadmer* tells us, That when the Archbiſhop of *Canterbury* preſided in a general Council of the Biſhops, the King permitted him not to appoint or forbid any thing, but ſuch things as were agreeable to his will, and by himſelf were firſt ordained. Alſo he ſaith in all his Dominions, he would allow no Biſhop of *Rome* to be accounted Apoſtolic, but whom he commanded to be received; nor any to receive his Bulls or Breves, unleſs they were firſt ſhown to him.

I have in the beginning of this Chapter ſpoken ſomething of the Mutations that *William* the Conqueror made in the Conſtitution of the Government of *England*; concerning which I ſhall only note, That the Conqueror took all the care (that a great Commander and Conqueror of a great Nation could do) for ſecuring his Conqeſts (*p*) by building Fortreſſes and Caſtles within the City of *London*, and placing *Norman* Garriſons

(*p*) *Pictav. fol.* 197. *C. Ingulph.* 512. *a lin.* 7. What the Conqueror did to ſecure his Conqueſt.

riſons and *French* Governours or *Caſtellanes* in the Caſtles in the Country, and giving them great Eſtates, and carrying the chief of the *Engliſh* Nobility with him as Hoſtages into *Normandy*, and impoſed his Laws, as *Pictavenſis* relates; and though he, who was Chaplain to the *Conqueror*, ſpeak of the *Conqueror's* ſmooth behaviour to the *Engliſh*, ordering things as he ſaith, prudently, juſtly and mildly; ſome to the Profit and Dignity of the City; ſome to the advantage of the whole Nation; and other ſome to the benefit of the Churches of the Land: and whatever Laws he dictated, he eſtabliſhed with excellent reaſon; and adds, That no *French-man* (r) had any thing given him, which was unjuſtly taken from any *Engliſhman*, (which laſt, *Ordericus Vitalis* omits, though in other things he follows *Pictavenſis* exactly) yet *Pictavenſis* writing but to the Fourth of his Reign, *Anno* 1070. as is noted by *Ordericus*, we muſt look upon them as incompetent Witneſſes of the ſeverity the *Conqueror* after uſed, when he had ſecured his Conqueſt. So that what is urged by ſome, of the *Conqueror's* lenity, and his little change of Laws and Government, is to be underſtood of thoſe times while he was unſafe in his Conqueſts, and doth not ſo interfere, as they would make the World believe, with the aſſertion of thoſe, who from credible Authors ſpeak of his treating the *Engliſh* as a Conquered People. For *Pictavenſis* (s) ſaith, that he poſſeſſed the Country by the rights of War. *Ordericus* (t) *Vitalis* ſaith, That having circumvented the two great Earls of *Mercia*, and ſlain *Edwin*, and impriſoned *Morcas*, then he began to ſhew himſelf, and gave the beſt Counties of *England* to his Aſſiſtants; and of the loweſt of the *Norman* Clients, or very mean People, he made very rich Colonels and Captains, as he particularizes there; and in another (u) place, That having overthrown by Force and Arms the *Engliſh Saxons*, they obtained their Lands and all their Riches.

Malmsbury (w) ſaith, That there was no *Engliſhman* Duke, or Biſhop, or Abbat, but Strangers do gnaw the Riches, and very Bowels of *England*. So (x) *Hen.* of *Huntingdon* ſaith, there was ſcarce any Prince of the Progenie of the *Engliſh*, but all are reduced to Servitude and Sorrow; ſo that it is a diſgrace to be called an *Engliſhman*: and *Gervaſe* of *Canterbury* ſaith, That he uſed both Eccleſiaſtick and Secular Rights or Laws as he pleaſed, *tam Eccleſiaſtica Jura quam ſecularia ſibi uſurpavit.*

As to King *William's* diſplacing of the *Saxons*, I find in the Tranſcript of *Doomſday-Book* that I have for *Yorkſhire*, that very many enjoyed the ſame Lands they did in *Edward the Confeſſors* time; but I remember no where that I do not find them hold of ſome *Norman* Lords, which is agreeable to what Dr. *Brady* writes; but I refer the Diſcourſe of thoſe to my Antiquities of *Yorkſhire*, if God give me life and ability to publiſh them.

As to the *Conqueror's* changing the holding of Lands here, to the (y) Feudal Tenure uſed in *Normandy* (begun by the Germans,

(q) *Id. fol.* 206 *a.* 207 *c.* 208 *a. b.*

(r) *Nulli tamen Gallo datum eſt quod Anglo cuiquam injuſte fuerit ablatum.* Idem, fol. 208. c.

How he comported himſelf after he had ſecured his Conqueſt.

(s) *Jure Belli poſſedit. fol.* 206. *a.*

(t) *Adjutoribus ſuis inclytas Angliæ Regiones diſtribuit, & ex infimis Normannorum Clientibus Tribunos & Centuriones ditiſſimos erexit.* Orderic. Vit. 251.

(u) *Fundos eorum cum omnibus divitiis obtinuimus.* Id. fol. 853.

(w) *Malmsb. fol.* 52. *a. num.* 40.

Vix aliquis Princeps de progenie Anglorum eſſet in Anglia, ſed omnes ad ſervitutem & mœrorem redacti eſſent, ita ut Anglicum vocari opprobrium.

(x) *Hen. Hunt. fol.* 210 *b. num.* 10.

About the continuing the *Engliſh Saxons*, but changing their Tenures, Services, &c.

(y) *Spelman. Gloſſ. Feodum.*

mans, Longobards, Francks and others, and of which ſomething ſeems to be hinted in the *Engliſh Saxon* Laws) all Authors do conclude, that the *Conqueror* brought the exacter uſe, at leaſt, of them into *England*, and divided the whole Land into ſeveral Knights-fees, whereof there are reckoned 700 Tenants *in Capite*, beſides Biſhops, Abbats, Priors and great Churchmen; and the Laws of King *Edward* that the *Conqueror* permitted to be uſed, were either moſt of them Penal Laws, from which he got profit, or ſuch as are properly his own, and were efficacious for the preſervation of the Peace, and eſtabliſhment of Government, as the 52, 55, 56, 58, 59, 64. whereof the 55, 58, and 59. are Feudal.

How *William the Conqueror* brought in his other *Norman* Laws, Dr. *Brady* in his Preface to the *Norman* Story, hath at large diſcourſed; ſo that in Juſtice I muſt refer the Curious Reader to his elaborate work, and to Mr. *Selden* in his Second Book of his *Janus Anglorum.*

Of the Great Councils in William *the Second's time.*

IN the Reign of *William Rufus* we find few Great Councils. So that *Anſelm* Archbiſhop of *Canterbury* complains (*a*) to him (when he was preparing to paſs into *Normandy*) that ſince he was King, there had been no General Council of the Biſhops, nor of ſeveral years before, ſo that Chriſtianity was much decayed.

(*a*) *Eadmer. Hiſt. Nov. lib.* 1. *fol.* 24. *lin.* 8.

The firſt great Council I have met with, is that of *Winchester.* This Council is only thus expreſſed, *Rex adunato* Wintoniæ *conventu Nobilium*, without ſpecifying either Eccleſiaſticks or Laicks. In this Council the King declared *Anſelm* Archbiſhop, and he did Homage to him.

(*b*) *Idem, fol.* 20. *num.* 30. *Anno D.* 1093. 5 *W. Ruſi.* The Conteſt betwixt *William* the Second and *Anſelm.*

(*c*) This *Anſelm* ſought leave of the King that he might go to *Rome*, to receive the *Pall* from Pope *Urban*, whom the King did not own for Pope, but *Clement.* This and ſome other Matters occaſioned ſharp words and unkindneſs from the King to *Anſelm*; the King abſolutely denying him liberty to go, telling him, that he owned not *Urban pro Apoſtolico*, and that it had neither been his, nor his Fathers cuſtom, that any ſhould own (*d*) any Pope in the Kingdom of *England*, without his Licence or Election; and whoever would take from him this Power of his Dignity, did the ſame as if he endeavoured to deſpoil him of his Crown. But *Anſelm* perſiſted, that he had declared (before he would conſent to be Biſhop, while he was Abbat of *Becc*) that he received *Urban* for Pope, neither that he would in any manner depart from his Obedience and Subjection. At which the King was very angry, proteſting, that *Anſelm* could not againſt the Kings good pleaſure keep his Faith which he owed to him, and his Obedience to the Apoſtolick See. So *Anſelm* (ſaving his Reaſon or Argument which he declared concerning his Subjection and Obedience to the *Ro-*

(*c*) *Idem, p.* 26. *num.* 10. 6 *Gul.* 2.

(*d*) *Paternæ conſuetudinis extitiſſe, ut præter ſuam licentiam, aut electionem aliquis in Regno Angliæ Papam nominaret, & quicunque ſibi hujus dignitatis poteſtatem vellet præripere, unum foret ac ſi coronam ſuam ſibi conaretur auferre.* Idem num. 50.

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man Church) desired Respite for the examining the Matter in Question, till it might be defined by common consent (the Bishops, Abbats, and all the Princes of the Kingdom meeting together) whether (saving his Reverence and Obedience to the Apostolick See) he could keep his Faith to his Earthly Prince; and if it be proved that both of them could not be done, he had rather depart the Kings Land, till the Pope was owned, than for an Hour deny Obedience to St. *Peter* and his Vicar.

The Question moved, Whether Archbishop *Anselm* could keep his Faith to the King, saving his Obedience to the Apostolick See?

Then it follows, *Dantur ergo Induciæ, atque ex Regia Sanctione ferme totius Regni Nobilitas* 5. *Id. Martii pro ventilatione istius causæ in unum apud Rochingheham exit.* *Idem, num.* 10.

The Convention was on *Sunday* in the Church of the Castle, The King, and those (*e*) that were of the Kings part, secretly and studiously contriving their Councils against *Anselm*; then follows a plain description, who they were that constituted this Great Council, *Anselmus autem Episcopis, Abbatibus & Principibus ad se a Regio secreto vocatis*, *Anselm* calling the Bishops, Abbats and Princes to himself from the Kings Secret Council, or from the Consultation they had with the King. By these I conceive we may understand the constituent Parts of this Great Council.

(*e*) *Rege & suis secretius in Anselmum Concilium studiose texentibus; Anselmus autem, Episcopis, Abbatibus, & Principibus ad se a Regio secreto vocatis.*

Then follows, *eos & assistentem Monachorum, Clericorum, Laicorum numerosam multitudinem hac voce alloquitur*; *Anselm* makes his Speech to those, that is, to the Bishops, Abbats and Princes, and likewise to the numerous multitude of Monks, Clerks and Laicks there present, standing or sitting there as Auditors, not Assessors, as the sequel will show.

(*f*) He tells them how he was forc'd to leave his Country, by reason of the Kings desire, that Council being taken, it pleased the King and them to chuse him, and that then he declared for Pope *Urbane*, and then tells them the straits he was in, as before related, and so desired their Counsel, and prays them all, especially, his Brethren and Co-Bishops to give him advice.

(*f*) *Id. num.* 30, 40, 50.

The (*g*) Bishops tell him, They would advise him to submit to the King in all things as they were ready to do; but if he commanded, they would acquaint the King with his Discourse, and return his Answer; and the King (*h*) ordered, that all things should be deferred till the next day, because that was *Sunday*, and *Anselm* should return to his Lodging, he being about to petition that the Court might remain; unless the words are to be read, *curiam mane repetiturus*, he to return to the Court in the Morning; because the following words are, *Factum est ita, & mane juxta conductum reversi sumus*, It was so done, and in the Morning according to agreement we returned.

(*g*) *Id. fol.* 27. *num.* 10.

(*h*) *Anselmus ad hospitium suum, Curiam manere petiturus, reverteretur.*

Then it follows, Anselmus *in medio Procerum & conglobatæ multitudinis sedens, ita orsus est, Si juxta quod a vobis Domini Fratres hesterno die consilium de præsenti causa petivi, vel nunc dare velletis, acciperem*; *Anselm* sitting in the midst of the Nobles, and the encompassing multitude, begun thus, If you my Lords and Brothers will give me counsel about the present Cause, as I Yesterday desired or

petitioned, I will receive it. In which we may obſerve, that he applies himſelf principally to the Clergy, unleſs we read the words disjunctively, *Domini*, *Fratres*, as we ſhall preſently find he doth.

They give him the ſame Anſwer they did the day before, That he ſhould ſubmit to the Pleaſure of the King: but if he, according to God, expected Counſel from them, which might in any thing gainſay the Kings Will, it would be labour in vain; for they would not aſſiſt him in it.

Then *Anſelm* lifting up his Eyes aloft, with a lively Countenance, and a reverend Voice, ſpeaks to them thus; *Cum nos qui Chriſtianæ Plebis Paſtores, & vos qui Populorum Principes vocamini*: When we that are the Paſtors of the Chriſtian People, and you that are called the Princes of the People will give me Counſel, not otherwiſe than according to the Will of one Man, your Prince; I will run to the chief Paſtor and Prince of all, to the Angel of the Great Council, *&c.*

In this Conteſt is diſcovered who were the Members of the Great Councils.

In which we may obſerve, to my purpoſe, that he divides this *Curia*, or Great Council, into two parts, the Paſtors of the People, or the Biſhops and Abbats, and the Princes of the People: ſo as here are no Commons, as in the acceptance of the word in this and later Ages they are underſtood. For the *Multitudo* here mentioned, are to be taken to be Spectators, who flocked to hear the Cauſe, as in other Courts; and even at this day, upon the hearing of Appeals at the Bar of the Houſe of Lords, it is uſual for many to croud in as far as the Bar.

That theſe Great Councils met where the King kept his Court at *Chriſtmas*, *Eaſter* and *Whitſontide*, by cuſtom, often is mentioned in our Hiſtories, and needs no further Proof than what Doctor *Brady* hath produced; therefore upon this occaſion of Archbiſhop *Anſelm*, I ſhall only relate what *Eadmerus* ſaith, That he attended the King at *Pentecoſt*, ſometimes at Dinner-time, when he made his great Feaſts, and other times during the Holidays, to try if the King's Mind was altered, but found no change. (*i*) Therefore the Feſtival-days being paſſed, the cauſes of divers affairs according to cuſtom, began to be tranſacted, ſaith my Author, among which that that of *Anſelm*'s was one.

Great Council at *Pentecoſt de more.*

(*i*) *Peractis igitur Feſtivioribus diebus diverſorum negotiorum cauſæ in medium duci ex more cœperunt.* Id. p. 37. num. 40. *Ann.* 1096. *vel* 1097.

But to draw to a Concluſion of this King's Reign, my Author clears who were the Members of the Great Councils, and that they were convened at the King's Pleaſure, in the relating that in the following (*k*) Month of *Auguſt*, when the King being to tranſact things concerning the State of the Kingdom, by his Summons had convened the Biſhops, Abbats, and all the Noblemen of his Kingdom. The affairs for which they were aſſembled being diſpatched, and every one prepared to return home; *Anſelm* moves again his Petition, and in *October*, when the Convention was diſſolved, he applied himſelf again to the King at *Wincheſter*.

(*k*) *Menſe Auguſto cum de ſtatu Regni acturus Rex, Epiſcopos, Abbates, & quoſque Regni Proceres in unum præcepti ſui ſanctione egiſſet, &c.* Id. p. 38. num. 10.

Here

Here we may obſerve that it was the King, who being to tranſact things about the State of the Kingdom, by the Authority of his Precept or Summons, called together the Members of the Great Council, who are expreſly mentioned to be the Biſhops, Abbats, and all the Noblemen of the Kingdom. Since therefore we find no other kinds of Great Councils in any Authors that write of this King, we may conclude, the Commons were no ways repreſented in any of them.

The King ſolely ſummons the Great Councils, and diſmiſſeth them.

Moſt Authors mention this King with no good Character. One old Writer ſaith, That all Juſtice of Laws was in his time huſhed in ſilence, and Cauſes being put in a Vacation without hearing, Money alone bore ſway among the great ones.

Omnis jam legum ſiluit Juſtitia, cauſiſque ſub juſtitio poſitis, ſola in Principibus imperabat pecunia. Florent. Wigorn.

Polydore Virgil will have the right or duty of Firſt-fruits, called *Annats*, which our Kings claimed for vacant Abbies, and Biſhopricks, to have had their Original from King *William Rufus*. However that be, it is certainly true, that at his Death the Biſhopricks of *Canterbury*, *Wincheſter*, and *Salisbury*, and twelve Monaſteries beſides, being without Prelates and Abbats, payed in their Revenues to the Exchequer.

We may judge likewiſe of his burthenſome Exactions, by what we find in his Brother King *Henry* the Firſt's Charter: Wherein he ſaith, becauſe the Kingdom was oppreſſed with unjuſt Exactions, he makes the Holy Church free; and all evil Cuſtoms, wherewith the Kingdom of *England* was unjuſtly oppreſſed, he doth henceforth take away, and they are all in a manner, mitigations of the Severity of the feudal Tenor, as any one may ſee in *Matthew Paris*, Mr. *Selden*, and Dr. *Brady*, and is plain by the very firſt concerning the Laity, That if any one of my Barons, Counts, or others that hold of me, ſhall dye, his Heirs ſhall not redeem his Lands, as he was wont to do in the time of my Father, *&c.* And in another, That according to the relaxation he had made to his Homagers, they ſhould regulate themſelves towards the Sons, Daughters, and Wives of their Homagers.

Matt. Paris fol. 74. *Edit. penult.*

Præcipio ut homines mei ſimiliter ſe contineant erga filios, & filias, & uxores hominum ſuorum.

Of the Great Councils in King Henry *the Firſt's time.*

CONcerning the Great Councils in King *Henry* the Firſt's time, as alſo till *Edward* the Firſt's time, I muſt refer the inquiſitive Reader to Dr. *Brady*'s anſwer to Mr. *Petyt* in the reſpective Kings Reigns, and to his Appendix, in which he hath amaſſed out of *Eadmerus*, *Simeon Dunelmenſis*, *Florentius Wigornenſis*, *Hoveden*, *Gervaſius Dorobernenſis*, *Matt. Paris*, *Malmsbury*, and other Authentick Writers, the Emphatical Expreſſions, by which the conſtituent Parts of the Great Councils are fully proved to be only the Biſhops, Abbats, and Priors for the Clergy: or the great Nobility, or prime Tenents *in Capite*, ſuch as the King pleaſed to ſummon under the names of *Magnates*, *Comites*, *Proceres*, *Principes*, *Optimates*, *Barones*, or *Sapientiores Regni*, expreſly uſed for *Barones*.

Where

Where the *Populus* is used by way of *Antitheſis*, as contradiſtinct from the *Clerus*, and where *Regni Communitas*, or *Ingenuitas* is uſed; the ſame Doctor *Brady* by pregnant Proof, puts it beyond diſpute, that none of the Commons, as now we underſtand them, could be meant as Repreſentatives.

So that though I had collected a conſiderable number of ſuch Proofs, e're I ſaw the Learned Doctor's *Book*, I ſhall now wave them all, and only add in every King's Reign ſome few that he hath omitted, or wherein ſomething remarkable, relating to the King's Soveraignty, or the manner of conſtituting Laws, is found by him noted, or as I have met with them in my Reading.

In the third of *Henry* the Firſt, in the Feaſt of St. (*a*) *Michael* (ſaith the Monk of *Worceſter*) the King was at *London*, and with him all the *Princes of his Kingdom of the Eccleſiaſtick and Secular Order:* and of the ſame Council *Malmsbury* ſaith, The King *bidding* (*b*) or *willing* with the common Conſent of the Biſhops, and Abbats, and Princes of the whole Kingdom, the Council was united: and this being moſtly about Eccleſiaſtick affairs, it is added that in this Council the *Optimates Regni*, at the Petition of *Anſelm* were preſent; and gives the reaſon, For that whatever might be decreed by Authority of the Council, might be maintained firmly by the mutual care of both orders. Whereby we may note the Obligation upon Subjects of both Orders, to obſerve the Laws once enacted by the King and Council. *Anno* 1107. 7 *H.* 1. *Matth. Paris* ſaith, (*c*) there was a convention of the Biſhops and Abbats, as likewiſe of the *Magnates*, *i. e.* Noblemen, at *London* in the King's Palace, Archbiſhop *Anſelm* being Preſident. To which the King aſſented, and ſpeaking of what was eſtabliſhed, he ſaith, *Rex ſtatuit.* To him *Hoveden* agrees; only what the one calls *Magnates*, the other calls *Proceres.*

The Manuſcript of *Croyland* (*d*) ſaith, The ſame Year the King giving manifold thanks to God for the Victory he had given him over his Brother *Robert*, and other Adverſaries, appointed a famous Council at *London*, as well of the Biſhops and Abbats of the whole Clergy of *England*, as of the Earls, Barons, *Optimatum & Procerum totius Regni.* In this Council the King (*e*) remitted, freely granted, and fully promiſed, the Inveſtiture by Ring and Staff, and freely left the Election of the Prelates to their reſpective Churches. By which we may not only note who made up this Great Council, but that the enacting part was ſolely the King's Grant.

The Charter (*f*) of *Henry* the Firſt was made before the Eighteenth of his Reign, in which he ſaith, becauſe his Kingdom was oppreſſed with unjuſt Exactions; in (*g*) reſpect of God, and the Love which he hath to his Subjects, he makes the Holy Church free, and ſo proceeds in the reſt of his Laws, by way of ſingle Grant, and Prohibition.

Anno 1127. 28 *H.* 1. (*h*) *W.* Archbiſhop of *Canterbury* gathered a General Council of all the Biſhops, Abbats, and Religious Perſons,

(*a*) *Omnes Principes Regni ſui Eccleſiaſtici & Secularis Ordinis.* Flor. Wigorn. Anno 1102. 3 H. 1.

(*b*) *Ipſo Rege annuente communi conſenſu Epiſcoporum, Abbatum & Principum totius Regni adunatum eſt Concilium.* De Geſt. Pontif. Anno 1102.

(*c*) *Factus eſt conventus Epiſcoporum & Abbatum pariter & Magnatum ad Ann.* &c.

(*d*) *Tum Epiſcoporum & Abbatum totius Cleri Angliæ*; by which muſt be underſtood the great dignified Clergy. Sub Wifrido Abbate, p. 104.

(*e*) *Remiſit, libere conceſſit, integre promiſit.*

(*f*) *Lib. rub. Scaccar.* Twyſden *LL. H.* 1. *p.* 175.

(*g*) *Ego reſpectu Dei & amore quem erga vos habeo.* Matt. Paris fol. 292. num. 10. See the Explanation of this Charter, *Brady's Argum. fol.* 265. and *Selden's Epinomis.*

(*h*) *Rex--auditis Concilii geſtis conſenſum præbuit. Authoritate Regia & poteſtate conceſſit, & confirmavit ſtatuta Concilii.* Continuat. Florent. Wigorn. p. 503.

Perſons, and at the cloſe of the Acts it is ſaid, That the King being at *London*, having heard the Acts of the Council, gave his conſent to them, and by his Kingly Authority and Power, granted and confirmed the Statutes of the Council. By which we may ſee that even the Conſtitutions of Eccleſiaſtical Councils required the Sovereign's Confirmation.

Of the Great Councils in King Stephen's *time.*

THat he was an Uſurper, is notoriouſly known. His firſt great Council is only ſaid by *Malmsbury* to be gathered at *London*, (*a*) conſiſting of Biſhops, Nobles, and Abbats, in which many Eccleſiaſtical and Secular Matters were ordained. *Matthew Paris* ſaith, That he having gathered at *London* the *Magnates Regni*, he promiſed the bettering of the Laws according to the will (*b*) and pleaſure of all. The reaſon of which compliance of this King was, for that he was ſet up and Crowned by a Faction, there being reckoned by Authors none of Eminence preſent at his Coronation, but the Archbiſhop of *Canterbury*, the Biſhop of *Wincheſter*, and *Roger* of *Salisbury* his Brother, no Abbats, and but few of the Nobility, they having all ſworn (*c*) Fealty to *Maud* the Empreſs in *Henry* the firſt's life time, though he in the following Charter ſaith, That he was elected King, *Aſſenſu Cleri & Populi.* But to proceed,

(*a*) *Coacto magno Epiſcoporum, Procerum, & Abbatum concilio.* Fol. 92. b. num. 4.

(*b*) *Juxta voluntatem & arbitrium ſingulorum.* Fol. 62. num. 40.

(*c*) *Malmsb. Hiſt. Novel. fol.* 101. *b. num.* 16.

King *Stephen primo Regni* at *Oxford*, *Anno* 1136. grants the Liberties to his Subjects by way of Charter, (*d*) that the Church be free, and he confirms due Reverence to it, and ſo proceeds to recite many particular Priviledges to it: and as to his Lay-Subjects, he doth utterly root out all exactions, miſdeeds, and injuſtices evilly brought in by Sheriffs or any others; That he will obſerve himſelf, and appoints and conſtitutes to be obſerved the good Laws, and antient and juſt Cuſtoms in Hundreds Pleas, or other matters. This was by Charter, and my Author ſaith, he diſdains to ſet to the names of the Witneſſes which were many, becauſe he ſo lightly or fooliſhly changed all.

(*d*) *Ego Stephanus Dei gratia aſſenſu Cleri, &c. omnes exactiones, meſchenningas, & injuſtitias ſive per Vicecomites vel per alios quoſlibet male inductas funditus extirpo, bonas leges & antiquas & juſtas conſuetudines, &c. obſervabo, & obſervari præcipio & conſtituo.* Malmsb. Hiſt. Novel. p. 101. b. num. 20.

But *Richard Prior* of *Hexham* cloſes the Charter thus, (*e*) *Hæc omnia concedo & confirmo ſalva Regia & juſta Dignitate mea.* By which Concluſion it is apparent, the King reſerved to himſelf a Latitude to uſe his Prerogative, and ſome are of opinion, Kings cannot by any Conceſſions diveſt themſelves of that; but I want Mittans to handle ſuch *noli me tangere's* of the Crown.

(*e*) *Ric. Prior Haguſtald. col.* 314. *num.* 6. *Anno* 1136. 1 *Regni.* The King grants his Charter with a *Salvo.*

What I have further to add concerning this Charter is, That the Prior of *Hexham* makes it granted after the Popes Confirmation (*f*) of him (in which, if ever that See conſulted its private Intereſt, it was then; and in my poor Opinion nothing hath more diſcovered the Perſonal failures of Popes, than ſuch countenancing of Uſurpers) my Author I ſay makes it to be paſſed at his Parliament at *Oxford*, where he ſaith, he celebrated

(*f*) *Id.* 313. *num.* 30. Note, That all Authors think ſtrange the Pope ſhould confirm and ſo countenance King *Stephen*, an Uſurper.

ted a general Council, *& Epiſcopos & Proceres ſui Regni regali edicto in unum convenire præcepit.*

(g) *Id.* 315. *num.* 10.

The Witneſſes this Author ſets down, makes it (*g*) appear there were none beſides the Clergy and Barons preſent; for after fourteen Biſhops named, the reſt of the Witneſſes are, *Roger* the Chancellor, *Henry* Nephew of the King, *Robert* Earl of *Glouceſter*, *William* Earl *Warren*, *Ralph* Earl of *Cheſter*, *Roger* Earl of *Warwick*, *Rob. de Vere*, *Miles de Glouceſter*, *Rob. de Olli Briano Filio Comitis Conſtab. Robert de Martel*, *Hugh Bigot*, *Humfrid de Bohun*, *Simon de Bellocampo*, *Dapif. Rob. de Ferrers*, *William Petrus*, *Simon de Silbancet*, *William de Albania*, *Hugh de Sancto Claro*, *Ilbert de Lecſio.* All which were very great Barons, the laſt of them being Heir to 150 Knights Fees; at leaſt his Grandfather had ſo many: So that we cannot judge the Commons by any Repreſentation were preſent.

(*b*) *Flor Wigorn. Anno* 1138. *fol.* 668.

(*i*) *Hen. Hunt. Anno* 1151. *fol.* 226.

(*k*) *Chron. Norm. Anno* 1152.

(*l*) *Jo. Brompton, col.* 1000. *num.* 50.

The other great Councils of this King are to be found in the Authors (*h*) cited in the Margent; That at *Northampton* had *Turſtin* Archbiſhop of *York* preſident, and the reſt enumerated are *Epiſcopi*, *Abbates*, *Comites*, *Barones*, *Nobiles quique per* Angliam. That of the ſixteenth (*i*) mentions only the Archbiſhop of *Canterbury*, *Euſtachius* the King's Son, *& Angliæ Proceres*; in the (*k*) Agreement 17 *Regni*, the *Conventus* was *Epiſcoporum*, *Comitum*, *& aliorum Optimatum*; and the laſt I find *Anno* 1154. *ultimo Regni* (*e*) is *cum Epiſcopis & Optimatibus*; never any Commons repreſented being to be met with.

Of the Great Council in King Henry *the Second's Reign.*

(*a*) *Spelman. Concil. Tom.* 2. *fol.* 54. *Congregavit Concilium generale, & renovavit pacem & leges & conſuetudines per Angliam ab antiquis temporibus conſtitutas.*

THE firſt conſiderable Act of State that I find *Henry* the Second did, was *Anno* 1154. 1 *Reg.* That he gathered his General Council to *London* in *Lent*, he renewed Peace and the Laws and Cuſtoms of antient times appointed through *England*, and by his writing and Seal confirmed to Biſhops and Abbats, Charters of Priviledges; whoſe Charter runs thus, *Hen.* &c. *Baronibus & fidelibus ſuis Francis, & Anglis ſalutem. Sciatis me ad Honorem Dei & Sanctæ Eccleſiæ, & pro communi emendatione Regni mei conceſſiſſe & reddidiſſe, & præſenti Charta mea confirmaſſe*, &c. and ſo confirms the Charter of King *Henry* the Firſt his Grand-father.

(*b*) Anſwer to *Petyt, fol.* 31. *ult. Edit.* See *Selden's* Correction of *Matt. Paris*, in his *Epinomis.*

(*c*) *Matt. Paris, fol.* 84. *num.* 20. *ult. Edit.*

As to the Council of *Clarendon*, about (*b*) *Thomas Becket* Archbiſhop of *Canterbury*, after he had once promiſed, and his after refuſing to ſet to his Seal in Confirmation of the Ancient Laws; I muſt refer the Reader to what Doctor *Brady* hath collected, and ſhall only touch upon that of (*c*) *Clarendon Anno* 1164. 10 *Hen.* 2. where thoſe preſent by the King's Mandate; were the Archbiſhops, Biſhops, Abbats, Priors, Earls, Barons and Noblemen of the Kingdom; and there was a Recognition of parts of the Cuſtoms and Liberties of King *Henry* the King's Grandfather, and of other Kings, which were compriſed in ſixteen Chapters. Theſe *Matthew Paris* calls wicked Cuſtoms and Liberties; becauſe they ſubjected the Clergy-

Concerning the Laws of this King, ſee *Selden's Epinomis.*

men

more to the Crown, than he and others would have had them; yet he ſaith, the Archbiſhops, Biſhops, Abbats, Priors, Clergy, with the Earls, Barons and Nobility, ſwore to them all, and promiſed firmly in the word of Truth, to hold and obſerve them to the King and his Heirs, in good Faith, and without Evil, and then adds, *decrevit etiam Rex*: by which it appears, that the Members of the Great Council did not only aſſent, but did bind themſelves by Oath and ſolemn Promiſe, obligatory to themſelves and their Poſterity, to keep and obſerve them; and upon the whole it is the King that decrees, appoints and conſtitutes. *Proceres.*

In all the great Councils of this King, it is manifeſt that the Members were only ſuch as in former Kings Reigns; only in that of the 22 *H.* 2. (*d*) it is ſaid, *Rex congregatis in urbe Londoniarum, Archipræſulibus, & Epiſcopis, & Comitibus, & Sapientioribus Regni ſui*; where *Sapientiores* are inſtead of *Barones*, and for the Kings Summons it is always ſaid, *Rex convocat, congregavit, præcepit convenire* or *mandavit*, as is moſt expreſly ſaid in that great Council, *Anno* 1177. 23 *H.* 2. (*e*) That the King ſent Meſſengers through the whole Iſle of *England*, and commanded the Archbiſhops, Biſhops, Earls and Barons of all *England*, that they ſhould be with him at *London*, the next *Sunday* after the beginning of *Lent*.

(*d*) *Ben. Abb. p.* 77. *Anno Dom.* 1176.

(*e*) *Ben. Abbas, p.* 86.

Of the Great Councils in King Richard *the Firſt's time.*

THere are few great Councils met withal in his ſhort Reign, he being ſo great a part of it out of the Kingdom: The firſt I find is in (*a*) *Matthew Paris Anno* 1189. 1 *Reg.* That in the day following the Exaltation of the Holy Croſs at *Pipewel*, *Archiepiſcoporum, Epiſcoporum, & aliorum Magnatum ſuorum fretus Concilio*, He ſupplied the Vacances of ſeveral Biſhops Sees.

(*a*) *Fol.* 129. *num.* 16

The Second I find is (*b*) when he and the King of *France* agreed to go to the Holy Land, where it is ſaid, that his Earls and Barons, who took the *Cruſado* in the General Council at *London*, ſwore, *&c.* of which it is that (*c*) *Matthew Paris* ſaith, That the King of *England*, *convocatis Epiſcopis & Regni Proceribus*, received the Oath from the Meſſengers of the King of *France*.

(*b*) *Hoved. fol.* 376. *a. num.* 30.

(*c*) *Fol.* 155. *num.* 50.

In the Fifth of King *Richard* (*d*) we have a full Example of the holding a Great Council by Commiſſion; for during the Impriſonment of King *Richard*, *Adam de Sancto Edmundo Clerk*, was ſent from Earl *John* the Kings Brother, to his Friends in *England*, to defend his Caſtles againſt the King, and dined with *Hubert* Archbiſhop of *Canterbury*, boaſting much of the *French* Kings aſſiſting Earl *John*: After Dinner the Mayor of *London* ſeized on him in his Lodgings, and upon all his Breves and Mandates, who delivered them to the Archbiſhop.

(*d*) *Hoved. fol.* 418. *b. num.* 20.

This occaſioned the Archbiſhop (being the Kings Commiſſioner) to convene a great Council the next day; but ſurely

A Great Council called on a Days warning.

ſurely Summons had iſſued out before, or elſe it is a great Inſtance, that the great Councils might be called of ſuch of the Clergy and Nobility as were neareſt at Hand; for my Author expreſly ſaith, (e) That the Archbiſhop the next day, called before him the Biſhops, Earls and Barons of the Kingdom, and ſhowed to them the Letters of Earl *John*, and the Tenor of them; and adds, that inſtantly by the Common Council of the Kingdom, it was defined that Earl *John* ſhould be diſſeiſed. This *Adam*, ſaith *Hoveden*, came into *England* not long before King *Richard*'s releaſe from his Impriſonment.

(e) *Qui in craſtino convocatis coram eo Epiſcopis, Comitibus, & Baronibus Regni, oſtendit eis literas Comitis Johannis & earum tenuras, & ſtatim per commune concilium Regni definitum eſt quod Comes Johannes diſſaiſiretur.* Idem.

The next great (f) Council I find, was upon the Thirtieth of *March*, ſummoned to meet the King at *Nottingham*, and at this were preſent *Alienor* the Kings Mother, *Hubert* Archbiſhop of *Canterbury*, *Geoffery* Archbiſhop of *York*, and ſeven Biſhops more, Earl *David* brother to the King of *Scots*, *Hamelin* Earl *Warren*, *Ralph* Earl of *Cheſter*, *William* Earl *Ferrers*, *William* Earl of *Salisbury*, and *Roger Bigot*, and names no more; but ſaith the ſame day, the King diſſeized (g) *Gerard de Canvil*, and others. It appears, that this Council ſat but four days, on the ſecond day the King required Judgment againſt Earl *John* his Brother; on the third day the King (h) appointed to be given him 2*s.* of every Carucate of Land through *England*, and that every one ſhould perform the third part of Military Service, according to their reſpective Knights Fees, to paſs over Sea with him into *Normandy*, and then exacted of the *Ceſtertian* Monks, all their Wool of that year, for which they compounded; and the fourth and laſt day, Complaints were heard againſt the Archbiſhop of *York*, and further Proſecution of *Gerard de Canvil.*

(f) *Idem*, 419. *a.* 30. A Great Council of four Days.

(g) *Rex diſſaiſivit Gerardum de Canvil de Comitatu Linc. & Hug. Bardolf de Caſtro & Comitat. Ebor.*

(h) *Rex conſtituit ſibi dari*, &c. *deinde præcepit*——*exigit.* Concerning the Form of Proceeding in the Pleas of the Crown, the Aſſize of the Foreſt, wherein the Laws made in this King's time are ſet down, ſee *Selden's Epinomis.*

Hoveden gives an account of the King's Progreſs, till the 11*th.* of the ſame Month, to which time the great Council was adjourned to meet at *Northampton*; where the King of *Scots* made his demands of the Counties of *Northumberland*, *Cumberland*, *Weſtmorland* and *Lancaſhire*; and my Author ſaith, That the King having taken advice with the Biſhops, Earls and Barons (no orders of Men more are mentioned) he gave anſwer to the King of *Scots*: but it ſeems he had no mind to part with thoſe Frontier Counties, but by Charter, in the preſence of his Mother *Alienor*, the Archbiſhop and other Biſhops and many others, as well Clerks as Laics of either Kingdom, he granted the King and his Heirs certain Allowances, Safe-Conduct, *&c.* when he ſhould come to the King's Court upon Summons.

Id. Hoved.

Remarks upon theſe Great Councils.

The moſt remarkable things in theſe Councils to be conſidered, are the quick diſpatch of Buſineſs in them, the ſmall Numbers they conſiſted of; and that there appears no Footſtep of any Commoners by Repreſentation; and by the Words, *Rex præcepit*, *conſtituit*, *&c.* it ſhows, that the King had ſolely the Authoritative Power of paſſing the Conſultations into binding Laws, even where Mony was to be levied of the Subject, and diſſei-

diſſeiſure was to be made, which was then practiſed, but by an happy eaſe to the Subject, is ſince by King *Edward* the Firſt abrogated; for which as we ought all to be thankful, ſo to make uſe of this great Liberty, that we may not abuſe it to the damage of the Crown, that beſtowed the Largeſs, and not ſo much boaſt our ſelves that we are freemen, as to remember gratefully whence our Freedom came.

Of the Great Councils in King John's *time.*

THE firſt great Council that I have met with in King *John's* time is that held at *Oxford*, (a) *Anno Dom.* 1204. 6 *Regni*, the Morrow after the Circumciſion, where, as *Matthew Paris* ſaith, *convenerunt ad colloquium Rex & Magnates*, and there were granted to the King two Marks and an half out of every Knights Fee. Yet though all the Members are included under the name of *Magnates*, yet my Author (b) ſaith, that neither the Biſhops, Abbats, or Eccleſiaſtic Perſons paſſed away without a promiſe (of ſupply, I ſuppoſe.)

So that I conceive the Clergy undertook for their Order to contribute ſomething apart, as it hath been ſince in uſe for the Convocation, to give a diſtinct *Tax* impoſed by themſelves on the Clergy: ſome evident Footſteps of which uſage we find in that Council of (c) *Clarendon*, wherein *Thomas Becket* Archbiſhop of *Canterbury* was required by the King that he and the Biſhops ſhould ſet to their Seals in Confirmation of the antient Laws the King enjoined to be obſerved; which when the Biſhops were willing to do, the Archbiſhop ſwore he would never do.

The Members of the Great Council, and the abſoluteneſs of King *John* in impoſing Taxes is fully diſcovered in what *Matthew* (d) *Paris* writes, that *Anno* 1207. 9 *Regni*, the King kept his *Chriſtmaſs* at *Wincheſter*, the *Magnates Regni* being preſent; and on the Purification of the *Virgin Mary*, he took through *England* the Thirteenth of Moveables, and other things, both of the Laics and Eccleſiaſtics, all murmuring, (e) but none daring to contradict him.

Anno 1213. 15 *Joh.* the King intending an expedition into *Normandy*, left *Geofrey Fitz-Peter*, and the Biſhop of *Wincheſter* Commiſſioners in his abſence, who at St. *Albans* held a Council with the Archbiſhop, the Biſhops, and the *Magnates Regni*, where on the part of the King it was firmly (f) enjoyned, that the Laws of King *Henry* his Grandfather ſhould be kept by all in his Kingdom, and all evil Laws ſhould be totally diſannulled, and all Sheriffs, Foreſters, and other Miniſters of the King, under the ſevereſt Penalties of Life and Limb, ſhould not violently extort any thing from any Perſon, or preſume to offer Injury to any.

In which we may obſerve the Conventions of great Councils in the Kings abſence, and that the Laws have force only by

(a) *Matt. Paris, fol.* 176. *num.* 30. *ult. edit.*

(b) *Nec etiam Epiſcopi et Abbates ſive Eccleſiaſticæ perſonæ ſine promiſſione receſſerunt.* Idem.

(c) *Hoveden, fol.* 282. *b. num.* 10. *Præcepit Rex Archiepiſcopis & Epiſcopis, ut Sigilla ſua apponerent, & cum cæteri proni eſſent ad id faciendum, Archiepiſc. Cant. juravit quod nunquam ſcripto illi apponeret, nec leges confirmaret.*

(d) *Fol.* 186. *num.* 30.

The King impoſeth Taxes.

(e) *Cunctis murmurantibus, ſed contradicere non audentibus.*

A Great Council held in the King's abſence.

(f) *Mat. Paris, fol.* 201. *num.* 30. *Ex parte Regis firmiter eſt præceptum, ſicut vitam & membra ſua diligunt, ne a quoquam aliquid violenter extorqueant, vel alicui injuriam irrogare præſumant.*

the King's Authority, as appears by the expreſſions, *ex parte Regis firmiter eſt præceptum.*

A Convention or Conſpiracy againſt the King.

In the ſame Year the Eighth of the *Calends* of *September*, *Stephen*, Archbiſhop of *Canterbury*, with the Biſhops, Abbats, Priors, Deans and Barons of the Kingdom, met at *London*, at St. *Pauls*, in a Conſpiracy againſt King *John*; and as (*g*) *Matthew Paris* ſaith, the Fame was, that the Archbiſhop calling to himſelf a Club of the Nobles, told them ſecretly, that they had heard how he had abſolved the King, and compelled him to ſwear that he ſhould deſtroy evil Laws, and ſhould recal the good Laws, *viz.*, thoſe of King *Edward*, and make them to be obſerved in his Kingdom; and that now there was found a Charter of King *Henry* the Firſt, by which if they would, they might recal to the Priſtine State, their long-loſt Liberties, which Charter he produced, and it was that made to *Hugh de Bocland* his *Juſticiary*, and ſo they made a Confederacy among themſelves, and broke up their Aſſembly.

(*g*) *Fol.* 201. *num.* 50, 60.

Obſervations on the foregoing Councils.

We may note, that this Convention at *London* was a Conſpiracy, yet it had the Face of a great Council, as to the conſtituent Parts of it, and no Repreſentatives of the People, and they grounded their Confederacy upon the regaining their loſt Liberties, and had recourſe to King *Edward's* Laws, and their Confirmation by King *Henry* the Firſt. So that even ſuch Rebels owned Kings the Fountains, Authors, and Eſtabliſhers of their Liberties, as well knowing they were born Subjects, and whatever was remitted of the abſolute Power of Princes, was by their own Grants; though they might be induced to thoſe Conceſſions from ſeveral cauſes, but whenever threats, force, or other neceſſities for ſupplies, or ſuch like, extorted theſe, they were very ill kept. *Anno* 1215. 17 *Joh.* the Barons preſſing the King to confirm the Charter of Priviledges, the Archbiſhop with his Aſſociates read over each Chapter. But the King underſtanding the Tenor of them, with indignation and ſcorn ſaid, (*b*) Why with theſe unjuſt exactions do not the Barons require the Kingdom? and ſwore he would never grant ſuch Liberties, whereby he ſhould be made a Servant.

(*b*) *Quare cum iſtis iniquis exactionibus Barones non poſtulant Regnum? Nunquam tales illis concederet libertates, unde ipſe efficeretur ſervus.* Matt. Paris, fol. 213. num. 60.

However he was afterwards at *Runing-mede*, compelled to ſign the Charter, there being with him but eight or nine Biſhops, four Earls, and ſome twelve Barons, as *Matthew Paris* numbers them; but he ſaith, as to thoſe preſent on the behalf of the Barons, the Company was innumerable, as being *tota Angliæ Nobilitas in unum collecta.*

Therefore the King grants them the Liberties by way of Charter (*i*) *per conſilium venerabilium Patrum noſtrorum, &c.* and ſo recounts thoſe that were preſent with him, not mentioning any of thoſe that were againſt him as I remember.

(*i*) *Idem, fol.* 215. *num.* 13.

This was the Charter which *Henry* the Third (*k*) confirmed, and is called *Magna Charta*, the principal matter in it, which relates to my purpoſe, was, that he made ſome alteration in the manner

(*k*) *Idem, fol.* 216. *num.* 30.

manner of Summoning Members to the Great Council, *viz.* That the Archbiſhop, Biſhops, Abbats, Earls, and greater Barons of the Kingdom, ſhould be ſummoned by ſpecial Writs, and that he would cauſe to be ſummoned by the Sheriffs and his Bailiffs, thoſe which held *in Capite* of him, to a certain day by general Summons. So that it is apparent, that the Great Councils heretofore had only conſiſted of ſuch Earls and great Barons and Tenents *in Capite*, as the King by ſpecial Writ pleaſed to Summon; and this new way brought in a greater number of the Tenents *in Capite*: but ſtill here were no Repreſentatives of the Commons.

The alteration of the Summoning the Members to the Great Council.

Note, In this Charter the King grants, he will raiſe no Money on the Subject, without Conſent, but in three Caſes; to redeem his Body, make his eldeſt Son Knight, and marry his eldeſt Daughter: And the like Power others had over their *Liberi homines*.

In the *Charta de Foreſta*, the King ſaith, *Dei intuitu, &c. ad emendationem Regni noſtri, ſpontanea & bona voluntate noſtra dedimus, conceſſimus pro nobis & hæredibus noſtris, has libertates ſubſcriptas.*

The King was ſore vexed, that theſe Liberties had been extorted from him, and ſent to Pope (*m*) *Innocent*, who alſo abſolved him from the Obligation, upon the ground that he had given (*n*) the Kingdom to St. *Peter*, and the Church of *Rome*, and ſo could make no ſuch Charter without his leave, and after he Excommunicated the Rebellious Barons.

He repents his granting the Charter.

(*m*) *Idem*, 224.

(*n*) *Id.* 227. *num.* 20. The Pope abſolves him.

In this Charter, as in all the reſt of the Charters of Liberties, we (*o*) may obſerve, that the Petitions of the People were drawn into the form of a Charter, and paſſed under the Kings Seal, as his meer voluntary free Grants, and Conceſſions, without any Votes, Suffrages, or Authority of the People. So *Matt. Paris* ſaith of this Charter, that when King *John* ſaw the Barons too powerful for him (*p*) *gratanter eis concederet Leges & Libertates quas petebant*; he willingly granted the Laws and Liberties which they asked, or petitioned for.

(*o*) *Animad. on Fan. Angl. fol.* 167. The King's Grant by Charter, a good Law then.

(*p*) *Fol.* 255. *num.* 30, 50.

So in the Charter it ſelf, (*q*) *Conceſſimus etiam, & omnibus liberis hominibus noſtri Regni* Angliæ *pro nobis & hæredibus noſtris in perpetuum omnes libertates ſubſcriptas habendas, & tenendas eis, & hæredibus ſuis de nobis, & hæredibus noſtris*: that is, And we have alſo granted to all our Free-men of the Kingdom of *England*, for us and our Heirs for ever, all the under-written Liberties, to have and to hold to them and their Heirs of us and our Heirs, *&c.*

(*q*) *Ibid. fol.* 256. *lin.* 18.

By *Freemen* here to be underſtood the Tenents *in Capite*.

CHAP.

CHAP. XXVI.

Of the Great Councils and Parliaments during the Reign of King Henry *the Third, to the end of the Reign of King* Edward *the Third.*

THE first great Council I find in this Kings Reign was on the Eighth of the Octaves of (*a*) *Epiphany*, *Anno* 1223. 7 *H.* 3. The King having kept his *Chriſtmas* at *Oxford*, came to *London*, to have a *Colloquium* with his Barons, and the Archbiſhop and other *Magnates* preſſed the King to confirm the Liberties and Free cuſtoms, for which Wars had been moved againſt his Father, and which he had confirmed by Oath, upon the receſs of *Lewis* of *France*; to which alſo he ſaid, the (*b*) whole Nobility had ſworn that they would obſerve them, and deliver them to all others to obſerve. To which *William Briwere*, one of the Kings Council, anſwering for the King, ſaid, The Liberties they deſired being violently extorted from the King, they ought not of right to be obſerved.

(*a*) *Matt. Paris fol.* 266. *num.* 60.

(*b*) *Juravit & tota Nobilitas cum eo, quod libertates præſcriptas omnes obſervarent, & omnibus traderent obſervandas.* Ibid.

Liberties violently extorted from the King, not binding.

From whence we may obſerve, that whatever claims were made for Liberties, ſtill they were grounded on the Monarchs Conceſſions, and ſuch as were by any violence wreſted from the Kings, were not reputed binding to the Crown.

In the Octaves of the Holy Trinity, the Eighth of *Henry* the Third, there met at a *Colloquium* at *Northampton*, the King with (*c*) the Archbiſhops, Biſhops, Earls, and Barons, and many other, to treat of the Affairs of the Kingdom. By theſe, *alii multi*, the Tenents in *Capite* are to be underſtood, which more numerouſly appeared ſince King *John*'s Charter. This Great Council was intended for the relief of *Poiction*; but *Falcacius de Brent* having ſeiz'd on *Bedford Caſtle*, and taken *Henry de Berybroke*, one of the Kings Itinerant Juſtices, obliged the King to proſecute him. At this (*d*) Council, the Prelates and Laics gave the King for his great Labours and Expences 2 *s.* upon every Plough, and the King granted to the *Magnates* 2 *m.* out of every Knights Fee. This was to be levied by the *Magnates*, ſuch as held of the King in *Capite*, of their Tenents, to reimburſe them what they had expended in aiding the King. And ſo the Council broke up.

(*c*) *Rex cum Archiepiſcopis, Epiſcopis, Comitibus, Baronibus, & aliis multis de Regni negotiis tractaturus.* Idem, fol. 269. num. 60. & 270.

(*d*) *Idem, fol.* 271. *num.* 20.

The King grants the Tenents *in Capite* Scutage upon their Tenents.

But the King 9 *Regni*, *Anno* 1225. (*e*) keeping his Court at *Chriſtmas* at *Weſtminſter*, *præſentibus Clero, & Populo, cum Magnatibus Regionis*. After the Solemnity was paſſed, *Aubert de Burgo* the Kings Juſticiary, on the part of the King, propoſed to the Archbiſhops, Biſhops, Earls, Barons, and all the *Univerſe* (that is the Tenent in *Capite*) the damages and injuries which were brought upon the King beyond Sea; by which, not only the King, but many of the Earls and Barons were diſinherited: therefore the King required Counſel and Aid of them of a Fifteenth.

(*e*) *Idem, fol.* 272. *num.* 20.

Et aliis univerſis.

Upon

Upon this the Archbiſhop, and the whole number of Biſhops, Earls, Barons, Abbats and Priors, having had deliberation, anſwered the King, That they would willingly yield to the Kings deſire, if he would grant them the long deſired Liberties. The King, ſaith my Author, being led by Covetouſneſs, or as he means, being deſirous of a ſupply, yielded to what the *Magnates* deſired; ſo he granted that which is called *Magna Charta*, ſo deſervedly priz'd by all *Engliſhmen* ever ſince, and the (*f*) *Charta de Foreſta*, and preſently Charters were got drawn, and the King ſealed them, and they were ſent into all Counties two; one of the Liberties, and the other of the Foreſts. *Magna Charta* granted.

(*f*) *Idem, num.* 30.

Matth. Paris ſaith expreſly, That they (*g*) were the ſame that King *John* had granted, and ſo refers the Reader to peruſe them in what he had writ on his Reign. It is to me very ſtrange, that ſince ſo many Original Grants of the Kings of *England*, and other ancienter Deeds, being every where to be found among the ancient Evidences of many Noble and Gentlemens Families; yet no where that I can learn, any of theſe Original Charters are to be found, except one at *Lambeth*, as Mr. *Pryn* hath obſerved; That upon Record being only an Exemplification in King *Edward* the Firſt's time

(*g*) *Ita quod chartæ utrorumque Regum in nullo inveniuntur diſſimiles.*

Anno 1232. on the Nones of *March*, the King called a Great Council to (*h*) *Weſtminſter*, where there met *Magnates Angliæ tam Laici quam Prælati*; The King required an Aid for the payment of his Debts, contracted by his Expeditions beyond Sea. To which *Ralph* Earl of *Cheſter* on behalf of the Nobility, anſwered, That the Earls, Barons, and Knights that held of the King *in Capite*, being with the King perſonally in that Expedition, and having fruitleſly ſpent their Money, were poor; ſo that of (*i*) right they ow'd not Aid to the King. And ſo my Author ſaith, the Laics having asked leave, all departed, and the Prelates anſwered, That many Biſhops and Abbats being abſent, they deſired reſpite till ſome other meeting, which was appointed fifteen days after *Eaſter*.

(*h*) *Idem, fol.* 314. *num.* 20. 17 *H.* 3.

(*i*) *Unde Regi de Jure auxilium non debebant.* Idem, num. 30. The Tenents *in Capite* having perſonally ſerved according to the Tenure of their Service, deny the King Aid.

By this we may obſerve, who they were that had the power of giving conſent, or granting aid; for if there had been any other Members of the Lay Order, beſides Earls, Barons, and Knights, that held *in Capite*, the Earls of *Cheſter's* Argument had been of no validity.

In the Statute of *Merton*, (*k*) 20 *H.* 3. it is thus expreſſed, Before *William* Archbiſhop of *Canterbury*, and other his Biſhops and Suffragans, and before the greater part of the Earls and Barons of *England* there being aſſembled, for the Coronation of the ſaid King, and *Helioner* the Queen, about which they were called; thus it was provided and granted, as well of the foreſaid Archbiſhop, Biſhops, Earls and Barons, as of the King himſelf and others.

(*k*) *Pulton. Stat. p.* 1. In one part it is ſaid, Our Lord the King granted by the Conſent of his *Magnates*.

I ſhall only cull out ſome few of the Great Councils in this Kings Reign, wherein moſt fully are expreſſed the true Members

bers of them, or ſuch wherein ſomething remarkable was tranſacted.

Anno 1237. 21 *H.* 3. The King keeping his *Chriſtmas* at *Wincheſter*, ſent his (*l*) Royal Writs through all *England*, commanding all that appertained to the Kingdom of *England*, that is, all who were to be Members of the great Council, which my Author explains particularly thus, *viz.* Archbiſhops, Biſhops, Abbats, Priors inſtalled, Earls and Barons, that without failure they ſhould meet at *London* on the *Octaves* of the *Epiphany*, to treat of the Affairs of the Kingdom, concerning the whole Kingdom; then he adds, That on the day of St. *Hilary*, there met at *London* an (*m*) infinite Multitude of the Nobles, *viz.* The whole Univerſity of the Kingdom, which were the Perſons of thoſe Orders before particularized.

(*l*) *Matt. Paris, fol.* 367. *num.* 30. *Miſit, &c. ſcripta Regalia, præcipiens omnibus ad Regnum Angliæ ſpectantibus, &c. ut omnes ſine omiſſione —convenirent Regni negotia tractaturi totum Regnum contingentia.*

(*m*) *Infinita Nobilium multitudo, viz. Regni totalis univerſitas.*

Anno 1246. 30 *H.* 3. By the Kings (*n*) Edict was called to the moſt general Parliament (ſaith *Matthew Paris*) all the Nobility of the whole Kingdom of *England*, *viz.* of the Prelates as well Abbats and Priors as Biſhops, alſo Earls and Barons; and a few Pages after, concerning the ſame Parliament, he ſaith, All the *Magnates* of the Kingdom met, and the King himſelf firſt ſpake to the Biſhops apart, then to the Earls and Barons, and laſt to the Abbats and Priors.

(*n*) *Edicto Regio convocata convenit ad Parliamentum generaliſſimum totius Regni Anglicani totalis Nobilitas.* Idem, p. 609. num. 10.

In this, that which frequently in *Matthew Paris* is called *Colloquium*, now he gives the Title of Parliament to, from the French word *parler*, to confer or ſpeak together; and we find what is meant alſo by *totalis Nobilitas*.

The word *Parliament* now uſed.

Anno 1253. 37 *H.* 3. By the (*o*) Kings Edict the Nobility of *England* being ſummoned, met at *London* to treat together with the King, of the arduous Affairs of the Kingdom; and there were preſent with moſt of the Earls and Barons, the Archbiſhop *Boniface*, and almoſt all the Biſhops of *England*. In this great Council were the Tenents *in Capite*, according to King *John*'s Charter. The King in this Parliament or *Colloquium*, requires Money for an Expedition into the Holy Land; but for fifteen days there were great Conteſts about it, till the King *de novo* confirmed King *John*'s Charters, and a ſolemn Excommunication was agreed upon, to be pronounced againſt the Infringers of it; and my Author ſaith, *Rex, Magnates, & Communitas Populi proteſtantur*, in the Preſence of the Venerable Fathers, *&c.* That they never conſented, or do conſent that any thing be added or altered in the Charters, but plainly contradict it; ſo 3 *May* (*p*) in *Weſtminſter*-Hall, the Exemplification paſſed the Seal of the King and other great Men.

(*o*) *Tota edicto Regio convocata Angliæ Nobilitas convenit de arduis Regni Negotiis ſimul cum Rege tractatura.* Idem. fol. 745. num. 40.

But it is principally to be conſidered what is expreſſed in the Patent,* That the King in the Declaration of the ſaid Sentence, did, by his own Mouth ſpecially ſave and except to himſelf and his Kingdom, all the Liberties, ancient Cuſtoms of his Kingdom, and Uſages, Dignities and Rights of his Crown.

(*p*) *Pat.* 37 *H.* 3. *m.* 13. *Anno* 1253. * *Præfatus Dominus Rex in prolatione præfatæ ſententiæ, omnes libertates, conſuetudines Regni ſui Angliæ & uſitatas dignitates & Jura Coronæ ſuæ ore proprio ſpecialiter ſibi & Regno ſuo ſalvavit & excepit.*

By which it is apparent how cautious the King was in theſe liberal Conceſſions, not to prejudice his Prerogative. They

are

are neither few in Number, nor of mean repute for judgment and learning in our Laws, who aſſert, that as Acts of Parliament made contrary to *Magna Charta*, are void; ſo likewiſe are all ſuch as diminiſh the Prerogative in any part of it, which is neceſſary for the ſupport of the Government: So upon the paſſing the Petition (*q*) of Right, King *Charles* the Firſt, the King ſaid, *The King willeth that Right be done according to the Laws and Cuſtoms of the Land, and that the Statutes be put in due Execution, that the Subjects may have no cauſe to complain of any Wrong or Oppreſſion, contrary to their Juſt, Rights and Liberties, to the Preſervation whereof he holdeth himſelf obliged, as well as of his Prerogative*: But this would not pleaſe, and ſo he pronounced, *Le droit ſoit fait comme il eſt deſire*, and adds, that, he is ſure, is full, but no more than he granted in his firſt Anſwer; his meaning in that being to confirm all their Liberties, knowing according to their Proteſtations, they neither meant nor can hurt his Prerogative. The Peoples Liberty ſtrengthens the Kings Prerogative, and the Kings Prerogative is to defend the Peoples Liberties.

Such like Proteſtation King *Richard* the Second made, 10 *Reg. Rot. Parl.* 10 *R.* 2. *num.* 32.

See in King *Stephen.* (*q*) His Majeſty's Speeches, *fol.* 368. of the *Baſilica.*

The reſt of the Parliaments of this Kings Reign, are ſaid to be called (*r*) *per ſcripta Regalia*, *ſubmonitione Regia*, or that, *ſcripſit Rex præcipiens*, or *miſſis literis convocavit*, *Anno* 1246. 30 *H.* 3. or *Edicto Regio convocat*, *&c.* which denotes the Authority convening them; and for the Members, they are either ſtiled *Magnates*, *omnis Regni Nobilitas*, or *Clerus & Populus cum Magnatibus*, *Magnates tam Laici*, *quam Prælati*, *Epiſcopi*, *& alii Eccleſiarum Prælati*, *cum Proceribus Regni*, or elſe they are particularly numbred to be Archbiſhops, Biſhops, Abbats, Priors, for the Clergy, and the *Comites & Barones* for the Laity. In one I find *Archiepiſcopus cum Suffraganeis ſuis* for the reſt of the Biſhops, and (*s*) another runs thus, *Anno* 1247. 31 *H.* 3. *fecit Dominus Rex Magnates ſuos nec-non & Angliæ Archidiaconos per ſcripta ſua Regia Londinum convocari.* Yet though *Matt. Paris* only mention the *Magnates & Archidiaconi*; yet he ſaith, when the prefixed day was come, the Biſhops all willingly abſented themſelves, and he gives the Reaſon, *ne viderentur propriis factis eminus adverſari*, *ſciebant enim corda omnium*, *uſque ad animæ amaritudinem*, *non immerito ſauciari.*

(*r*) *Id.* 435. *num.* 10. 21 *H.* 3. *Id.* 693. *num.* 20. 26 *H.* 3. *Id. fol.* 579. *num.* 40. *Id. fol.* 696. *num.* 30. *Id. fol.* 698. *num.* 40. *Vide* Brady's *Appendix*, *fol.* 59, 60.

(*s*) *M. Paris*, *fol.* 397. *num.* 10. 10 *H.* 3.

Then when he (*u*) gives an Account of the buſineſs of this great Council, he ſaith that the Archdeacons of *England*, as alſo not the leaſt part of the whole Clergy of the Kingdom, with the *Magnates* complained of the Popes exaction; and ſo Letters were writ to the Pope and Cardinals.

(*u*) *Id.* 629. *Edit. ult. num.* 10.

Archdeacons ſummoned to Parliament.

It may be noted alſo, That in thoſe Days the Kings ſummoned other dignified Clergy beſides Biſhops, Abbats and Priors.

I ſhall inſiſt no longer upon theſe Matters, but paſs to the great Mutation which was made in the Conſtitution of our *Engliſh* Parliaments: It ſeems to be clear, that before King *John's* time, the Members of the Great Councils were ſummoned by ſpecial Writ, and they were only the Archbiſhops, Biſhops, Ab-

The new Conſtitution of Parliament by Repreſentatives.

bats and Priors for the Clergy, and the Earls and Barons, and ſuch of the Tenents *in Capite* as were of greateſt quality, as the King pleaſed: But in King *John*'s Charter, all the Tenents *in Capite* were convened by a General Summons, which did much encreaſe the number of the Members of theſe great Councils; and by ſo much as they were more numerous, it is likely the Popular Barons hoped to make their Party the ſtronger againſt the King; for we find it introduced when the Barons were propenſe to rebel.

Montfort's Rebellion.

So the Second great Alteration on the Conſtitution of Parliament was introduced, when *Simon Montfort* Earl of *Leiceſter*, and the Rebellious Barons had the King and the Prince Priſoners. *Simon Montford*, to ſtrengthen his Intereſt, *firſt*, in the Kings Name, ſummons the Earls and Barons which were in Arms againſt the King; alſo at other times ſummoned more Abbats and Priors than had been uſed, for that the Clergy at that time had a great Opinion of him, and he was their Minion, as is apparent in *Matthew Paris*, and fully in the judicious (w) Doctor *Brady*, to whom I muſt ſpecially refer the curious Reader in this particular.

(w) Anſwer to *Petyt*, *fol.* 137, 138, 139.

The Form of the Writ of Summons.

The 14*th.* of *Dec.* 48 *H.* 3. the firſt Writ iſſued out thus, *Item mandatum eſt ſingulis Vicecomitibus per Angliam, quod venire faciant, duos Milites de legalioribus & diſcretioribus Militibus ſingulorum Comitatuum*, It is commanded to all the Sheriffs of *England*, that they make, or cauſe to come, two Knights of the more Legal and Diſcreet Knights of every County, to be at *London* on the *Octaves* of St. *Hilary* next.

(x) *Cl.* 49 *H.* 3. *m.* 11. *dorſo ſchedulæ.*

So in the like manner (x) Writs were directed to Cities and Burroughs, to ſend two of the more Diſcreet, Legal and Honeſt Citizens and Burgeſſes. This is without Date; that to the Barons of the Cinque Ports is *Jan.* 20. It doth not appear by the Writ to the Sheriffs, whether they or the Counties were to elect and ſend thoſe Knights, or who were Electors.

(y) *Brady* againſt *Petyt*, *fol.* 143. *Dugdale*'s Baronage, *fol.* 759. *col.* 3.

It is the Opinion of moſt learned (y) Men, that *Simon Montfort* apprehended (from the Concourſe of the Nobility, and their great Retinues, and the Example of his and the Barons Practices at *Oxford*) ſome danger to himſelf and his Affairs, and ſo altered the ancient Uſage.

Upon the 5*th.* of *Auguſt* 49 *H.* 3. *Simon Montfort* was ſlain at *Eveſham*, and all his Party routed; and the 8*th.* of *September* following, the King convened his Parliament at *Wincheſter*, which according to the old form, conſiſted only of the Biſhops, Abbats, Priors, Earls, Barons and Great Men: nor did he continue *Montfort*'s Method after, as appears by that Parliament he called 50 *Regni*.

The old Form again uſed.

All the Barons not ſummoned, but the more diſcreet, and ſo of the leſſer Barons.

By the Statute of *Marleburgh* 52 *H.* 3. it is evident, That even all the great Barons were not ſummoned, but only the more Diſcreet, and ſuch as the King thought fit to call; and the like is obſerved of the leſſer Barons or Tenents *in Capite*: For if it had been by General Summons, that Reſtriction of the

the more Diſcreet had been uſeleſs; ſo that it appears, that what (z) Mr. *Camden*'s ancient Author obſerves, is true, That after the horrid Confuſions and Troubles of the Barons Wars, thoſe Earls and Barons, whom the King thought worthy to ſummon by his Writ to meet, came to his Parliaments, and no other.

(z) *Britannia, fol.* 122. *Quibus ipſe Rex dignatus eſt brevia ſummonitionis dirigere, venirent, &c. & non alii.*

The Preamble to this Statute of (a) *Marlebridge* runs thus in *Tottel*, *Providente ipſo Domino Rege, ad Regni ſui Angliæ melioracionem & exhibitionem Juſtitiæ (prout Regalis Officii poſcit Utilitas) pleniorem, convocatis diſcretioribus ejuſdem Regni tam majoribus quam minoribus, proviſum eſt & ſtatutum, ac concordatum & ordinatum.*

(a) *Stat. Edit.* 1576. p. 15.

According to *Pulton* the (b) Preamble is thus, That whereas the Realm of *England*, of late, had been diſquieted, with manifold Troubles and Diſſentions, for Reformation whereof Statutes and Laws be right neceſſary, whereby the Peace and Tranquillity of the People muſt be obſerved; wherein the King intending to deviſe convenient Remedy, hath made theſe Acts, Ordinances and Statutes underwritten, which he willeth to be obſerved for ever firmly and inviolably of all his Subjects, as well high as low.

(b) *Fol.* 14.

The Uſe and Benefit of Laws.

Thus we ſee in the whole Reign of *H.* 3. (excepting in that Parliament of *Montfort*'s Faction) the Biſhops and dignified Clergy, Earls, Barons and Tenents *in Capite*, were only ſummoned as Members of the great Councils; and there were no Repreſentatives of the Commons; and the Kings Authority in ſummoning, diſſolving and making Laws is moſt manifeſt.

Of Parliaments in King Edward *the First's Reign.*

I Shall now glean out of *Tottel* and *Pulton*'s Editions of the Statutes, the moſt material Preambles, which give light to the conſtituent Parts of Parliaments, to the Legiſlative Power in the King, with the Concurrence of the two Houſes, and how *that* in the Series of the Kings Reign hath been expreſſed, and ſuch other matters relating to the Parliament, as may ſhew the gradual Progreſs of their Conſtitution, to the uſage of this preſent Age; leaving the Reader to make his own remarques from the matters of Fact, and the expreſſions uſed by my Authors, and explaining ſome.

The Preface to the Statute of (a) *Weſtminſter* begins thus, Theſe are the Eſtabliſhments of King *Edward*, Son to King *Henry*, made at *Weſtminſter*, at his firſt General Parliament after his Coronation, *&c.* by his Council, and by the Aſſent of the Archbiſhops, Biſhops, Abbats, Priors, Earls, Barons, and the whole Commonalty of the Land thither ſummoned.

(a) *Ceux ſont les eſtabliſhments le Roy* Ed. *fitz Roy* Hen. *fait a Weſtminſt. &c. par ſon Councel, & par l'aſſentments des Archeveſques, Eveſques, Abbes, Priores, Countes, Barons, & tout le Commonalty de la terre illonques ſummons.* Tottel. Stat. fol. 24. Pulton, p. 19.

This Parliament was prorogued before it met, and the Writ of Prorogation mentions only, *Quia generale Parliamentum noſtrum, quod cum Prælatis & Magnatibus Regni noſtri propoſuimus habere*, &c. Therefore having prorogued it, *mandamus*, &c.

Interſitis ad tractandum & ordinandum una cum Prælatis & Magnatibus Regni noſtri, (b) &c. So that all the Members are included in the two general Terms of *Prælati & Magnates*, which great Men very frequently comprehended as well the *Barones Majores*, as *Minores*, the Earls, Barons and greater Tenents *in Capite*, and the leſs, which then were called the Community of the Kingdom.

(b) *Brady* againſt *Petyt, fol.* 147.

The reſt of the Preamble of the Statutes made at (c) *Weſtminſter* runs thus, Becauſe our Lord the King hath great Zeal, and deſire to redreſs the State of the Realm, *&c.* the King hath ordained and eſtabliſhed theſe Acts under written.

(c) *Pulton's Stat. An.* 1275. 3 *E.* 1. *f.* 19.

The Preface to the Statute *de Bigamis*, 4 *Oct.* 4 *Ed.* 1. is thus (d) expreſſed, In the Preſence of certain Reverend Fathers, Biſhops of *England*, and others of the Kings Council, the conſtitutions under written were recited, and after heard and publiſhed before the King and his Council; for as much as all the King's Council, as well Juſtices as others did agree, that they ſhould be put in writing, for a perpetual memory, and that they ſhould be ſtedfaſtly obſerved.

(d) *In præſentia venerabilium patrum quorundam Epiſcoporum Angliæ & aliorum de Concilio Regis recitatæ fuerunt conſtitutiones ſubſcriptæ, & poſtmodum coram Domino Rege & Concilio ſuo auditæ & publicatæ: Quia omnes de conſilio tam Juſticiarii quam alii concordaverunt, &c.* Tottel. p. 39. b.

In the Firſt Chapter it is ſaid, *Concordatum eſt per Juſticiarios & alios ſapientes de Concilio Regni Domini Regis*, It was agreed by the Juſtices and other wiſe or ſage Men, of the Council of the Kingdom of the Lord the King.

Perhaps (ſaith the judicious Doctor *Brady*) the beſt underſtanding of the preamble and firſt Chapter, may be, that the Laws and Conſtitutions were prepared by the King and his (e) Council, with the Aſſiſtance of the Juſtices and Lawyers that were of it, or called to aſſiſt in it, and declared afterwards in Parliament: (f) for it is ſaid in the cloſe of the Statute, The aforeſaid Conſtitutions were publiſhed at *Weſtminſter* in the Parliament, after the Feaſt of St. *Michael*, the 4*th.* of the Kings Reign, and thence forward to take place.

(e) Anſwer to *Petyt*, *fol.* 148.

(f) *Prædictæ autem conſtitutiones editæ fuerunt, &c. & extunc locum habeant.* Tottel. fol. 40.

The Preamble to the Statute of *Glouceſter*, *Anno* 1278. 6 *E.* 1. is thus, (g) The King, for the amendment of the Realm, and for the more full Exhibition of Juſtice, according as the benefit of his Office requires, having called the moſt diſcreet of his Realm, as well the greater as the ſmaller; It is eſtabliſhed and unanimouſly ordained, as *Pulton* adds, after by the King and his Juſtices certain Expoſitions were made.

(g) *Pour amendment de ſon Roialm, & pur plus pleinir exhibition de droit ſi come le profit d' Office demand, apelles le plues diſcretes de ſon Roialme, auxi bien des Granders come des Meindres, eſtablie eſt & concordantment ordine.* Tottel. fol. 50.

The Statute of *Mortmain* is thus prefaced, *Nos pro* (h) *Utilitate Regni volentes providere, Remedium de Concilio Prælatorum, Comitum, Baronum & aliorum fidelium Regni noſtri de Concilio noſtro exiſtentium, providimus, ſtatuimus & ordinavimus*, which (i) *Pulton* renders by the Advice of our Prelates, Earls, Barons and Subjects of our Kingdom, being of our Council, the King hath provided, made and ordained; whereas by *Fideles* is to be underſtood the Tenents *in Capite.*

(h) *Tottel. p.* 48.

(i) *Pulton, fol.* 35. *Anno* 1279. 14. *Nov.* 7 *E.* 1.

The Statute of *Acton Burnel*, or Statute Merchant 11 *E.* 1. according to *Tottel*, was made by the (k) King himſelf and his whole Council: That this was done in Parliament, appears by

(k) *Ce Roy per luy & per tout ſon Counſel ad ordain & eſtablee.* Tottel, fol. 49. & 82.

by the Statute of Merchants, made in the 13*th.* of the ſame King, wherein it is ſaid, Our Lord the King, by himſelf and by his Council, at his (*l*) Parliament, which he held at *Acton Burnel*, 11 *Regni*, made and ordained theſe Eſtabliſhments; or as (*m*) *Pulton* hath it, The King cauſed the Statute made by the King and his Council at *Acton Burnel* to be rehearſed, and hath ordained and eſtabliſhed.

(*l*) *A ſon Parliament qu'il tient a* Acton-Burnel, &c.
(*m*) *Pulton, fol.* 36.

Since the 49 of *H.* 3. to the 18 of *Ed.* 1. we find (*n*) no Writs for ſummoning of Knights, Citizens and Burgeſſes; but the 14 of *June* 18 *Ed.* 1. The King iſſued out the following Summons, *Rex*, &c. *cum per Comites, Barones & quoſdam alios de Proceribus Regni noſtri nuper fuiſſemus ſuper quibuſdam ſpecialiter requiſiti, tam cum ipſis quam cum aliis de communitatibus Regni illius colloquium habere, volumus & tractatum*, &c. *Tibi præcipimus quod duos vel tres de diſcretioribus, & ad laborandum potentioribus Militibus de Comitatu prædicto, ſine dilatione eligi, & eos ad nos*, &c. *venire facias*, &c. *cum plena poteſtate pro ſe & communitate Comitatus prædicti, ad conſulendum, & conſentiendum pro ſe & communitate illa, his quæ Comites, Barones & Proceres prædicti, tum duxerint concordanda, vel concorditer ordinaverint in præmiſſis.* The *Engliſh* of which is, Whereas we have been eſpecially petitioned and requeſted by the Earls, Barons and others of the great Men of our Kingdom, concerning certain matters, upon which we will have Conference and treat, as well with themſelves as with others of the Counties of that Kingdom: We command thee, that without delay thou makeſt to be choſen, two or three of the moſt diſcreet and ableſt Knights, for diſpatch of buſineſs of the Counties aforeſaid, and cauſe them to come to us, *&c.* with full Power for themſelves, and the whole Community of the County aforeſaid, to conſult and conſent for themſelves and that Community, to ſuch things which the Earls, Barons and great Men aforeſaid, ſhall think fit to agree upon.

(*n*) *Rot. Pat.* 20 *E.* 1. *m.* 15.

The Form of Summons of Knights, Citizens, and Burgeſſes, renewed at the Petition of the Nobles.

Two or three Knights to be choſen.

From this we may obſerve, That by Vertue of this Writ, no Citizens or Burgeſſes could be choſen or ſent to Parliament; But only Knights for Counties: *Secondly*, The Scutage was granted in this Parliament, as Doctor *Brady* hath noted, fourteen days before the Writ for Election of Knights iſſued out; and it is (*o*) apparent, That the Statute of *Weſtminſter* the Third was made the Eighth of *July*, which was a week before they were to appear, and conſequently was made without them; for the Preamble runs, *Dominus Rex in Parliamento ſuo apud Weſtmonaſterium poſt Paſcham Anno Regni ſui* 18. *viz. in quindena S. Johannis Baptiſtæ* (*i.e.* 8 July) *ad inſtantium Magnatum Regni ſui conceſſit, providit & ſtatuit.*

No Citizens and Burgeſſes, but only Knights for Counties.

(*o*) *Tottel's Stat. p.* 85.

From this Writ and the Variation of the following Writs, and other Records, the judicious Doctor *Brady* (*p*) notes, That it was from the Kings Authority, and at this time, that the Houſe of Commons came to be fixed and eſtabliſhed, in the preſent conſtant form it now is and hath been for many Kings Reigns,

(*p*) Anſwer to *Petyt, fol.* 151.

Reigns, and it doth appear that King *Edward* the First was not altogether confined to any certain number of Knights, Citizens, or Burgesses, nor were several strict forms and usages now practised, ever then thought of, or some legal Niceties or Punctilioes now in use, then judged of absolute Necessity.

(q) *Pulton, An.* 1290. *fol.* 58. The Statute of *Quo* (q) *Warranto* in the Eighteenth Year of *Edward* the First, saith that the King of his special Grace, and for the affection he beareth to his Prelates, Earls and Barons, and others of his Realm hath granted, *&c.*

(r) *Idem, Anno* 1293. *fol.* 61. The Statute *de* (r) *Malefactoribus in Parcis* in the Twenty first Year of *Edward* the First, saith, Our Lord the King at his Parliament, *&c.* at the instance of the Nobles of the Realm hath granted, *&c.*

(s) *Cl.* 22 *E.*1.*m.* 6. *dorso.* Four Knights for a County. *Anno* 1294. the King issues out his (s) Writs to cause two Knights out of every County to be chosen, *&c.* Dated the Eighteenth of *October*, and the next day issues out Writs for other two to be chosen to meet at the same time and place.

(t) *Fol.* 241. * *Claus.* 28 *E.*1.*m.* 3. *dorso.* Out of Mr. *Ryley's* (t) *Placita Parliamentorum* it is clear, that the Parliament which met on the Octaves of St. * *Hilary* or the Twentieth of *January*, in the Twenty eighth Year of *Edward* the First, sate but eight days, the Writ for the Commons Expences, bearing date, *January* the Thirtieth of the same Year; and the Letter to the Pope, signed by the Temporal Lords for themselves, and the whole Community of the Kingdom of *England*; is dated *February* the twelfth next following, after the Commons had been dismissed fourteen days: so that the Barons still continued to stile themselves the Community of *England*, and both Spiritual and Temporal Barons, and others of the King's Council did stay and dispatch much Business after all others were dismissed, as further appears in a (u) Proclamation 21 *March*, 33 *Ed.* 1. Wherein the King gives the Archbishops, Bishops, and other Prelates, Earls and Barons, Knights of Counties, Citizens and Burgesses, and other Persons of the Commons, which by our Lord the King's Command came to this Parliament, many Thanks for their coming, and willeth that at present they return into their Counties, so as they readily, and without delay do come again at the time when they shall be remanded; except the Bishops, (w) Earls and Barons, Justices and others, which are of the King's Council, who may not depart without special leave of the King.

The Barons stay after the Commons dismissed.

(u) See *Brady's* Answer to *Petyt*, *fol.* 152.

(w) *Sauve les Eveſques, Countes, & Barons, Fuſtices, & autres qui ſont du Conſeil noſtre Seigneur le Roy, que ceux ne ſen allient ſaunz eſpecial conge du Roy.*

The King's Council prepare Laws.

I shall not here enter into the enquiry how far the extent of the Power of the King's Council was in those days; but it is very apparent that the King with advice of his Council, proposed Laws, and that others proposed by the Houses, were considered by the King and Council, as no doubt they are now considered before the King gives his Assent to Bills.

(x) *Pulton, An.* 1304. *fol.* 72. So in the Statute of the Definition of (x) Conspirators in the three and Thirtieth Year of King *Edward* the First, it is said, This Ordinance was accorded by the King, and his Council in his Parliament.

Also

Alſo in the Ordinance of (*y*) Enqueſts, the Eighteenth of *Sept.* in the Thirty third Year of *Ed.* the Firſt, It is ſaid it is agreed and ordained by the King and all his Council, that is, his Parliament.

(*y*) *Idem, Anno* 1305.

As to the ſpecial Prerogative of the King in giving the ultimate Character and *fiat* to the Laws, every Act expreſſeth it; ſo the Statute of (*z*) Champerty, the Statutes are called by the King, Our Statutes, and, Our Lord the King hath commanded; and in the Statute *de Conjunctim feoffat.* it is ſaid, It is no new thing that among divers Eſtabliſhments of Laws, which we have ordained in our time; ſo in the *Ordinatio Foreſtæ*, 34 *Ed.* 1. (*a*) We have ordained for our ſelves, and our Heirs. So in the Statute *De aſportatu Religioſorum*, 35 *Ed.* 1. it is ſaid by the Council of his Earls, Barons, great Men, and other Nobles of his Kingdom, at his Parliament, Our Lord the King hath Ordained and Enacted.

(*z*) 18 *Sept.* 33 *E.* 1.

The King Ordains.

(*a*) *Id. Anno* 1306. *fol.* 73.

I ſhall only note firſt, That in the Twenty eighth of this King thoſe the (*b*) King had appointed being ready to give an account of the Perambulation of the Foreſts, the King put a preſent ſtop to their report, and his determination; becauſe the Prelates, Earls, Barons, and the reſt of the *Magnates* of the Kingdom, in whoſe Preſence his own, and others Reaſons ſhould be propounded, and heard, and by whoſe Councils he intended to work (eſpecially ſeeing they were bound by Oath as well as himſelf, to obſerve and maintain the Rights of the Kingdom and Crown) were not then preſent, and thoſe were not ſummoned who ſhould propound their Reaſons, ſo far as the matters concerned them, and the King was not willing without their advice to put an end to the matters, therefore he orders the Sheriffs to cauſe the two Knights that came to the laſt Parliament, by his Precept, now to come, and the like for the Cities and Burroughs, and if any were dead, or infirm, ſo that he could not come, then to cauſe another to be choſen.

(*b*) *Cl.* 28 *E.* 1. *m.* 3. *dorſo.*

The Reaſon the King will determine nothing without advice in Parliament.

By which it appears that it was only from the King's Indulgence, and that he might more deliberately reſolve, for the beſt advantage of his Subjects, and for their ſatisfaction, that he would have the advice of a fuller Aſſembly.

We may alſo further note from hence, that it was in the King's Power to ſummon the ſame Knights, Citizens, and Burgeſſes without a new Choice, except the Perſons were dead or infirm.

Of the Parliaments in King Edward *the Second's time.*

IN this King's Reign, theſe following Particulars are moſt obſervable: In the Statute for (*a*) Knights, 1 *Regni*, it is ſaid Our Lord the King hath granted.

(*a*) *Pulton, An.* 1307. *fol.* 79.

In the Summons, 5 *Ed.* 2. the Precept to the Sheriff, is to cauſe to come to the Parliament, to be held at *Weſtminſter*, thoſe Knights, Citizens and Burgeſſes in his Bailiwick, which he cauſed to come lately to the preſent Parliament at *London*, and

The ſame Knights, &c. to come that were before.

and which for certain causes went from the said Parliament, (*b*) or others fit for the Imployment, if they cannot be at leisure. Dated *Octob.* 11.

(*b*) *Cl.* 5 *E.* 2. *m.*26. *dorso.* *Vel alios ad hoc idoneos loco ipsorum si ad hoc vacare non possunt.*

In the sixth of *Ed.* 2. we have an example of the King's (*c*) proroguing the House of Commons in these Words, *Dominus Rex præcepit quod Milites, Cives & Burgenses qui ad Parliamentum Regis ibidem summonitum, convenerunt pro Comitatibus, Civitatibus, & Burgis Angliæ, ad propria remearent, ita quod reverterentur ibidem in crastino S. Mich. prox. futuro sub pœna qua decet.* So that as they were commanded to return home, so they were appointed a time to return under the Intimation of a Punishment.

(*c*) *Cl.* 6 *E.* 2. *m.*27. *dorso.* A Form of Prorogation.

The Preamble to the (*d*) *Articuli Cleri* runs thus, That by the Kings Progenitors and himself, at the Instance of the Prelates, certain Articles were made, and in the Parliament at *Lincoln*, 9 *Regni*, he caused them to be rehearsed before his Council, and made certain answers to be corrected; and to the residue of the Articles, answers were made by him and his Council, and so by way of Charter they are published at *York*, 24 *Nov.* 10 *Regni.*

(*d*) *Pulton, An.* 1315. *fol.* 80. The King with his Council revise Articles after the Parliament ended.

The Statute of (*e*) *Gavelet* at *London* saith, It is provided by our Lord the King, and his Justices.

(*e*) *Id.* 1316. *fol.* 83.

In the Statute *de Terris* (*f*) *Templariorum*, it is said, Great conference was had before the King himself, in the presence of the Prelates, Earls, Barons, Nobles, and great Men of the Realm, and others present; whereupon the Greater part of the King's Council, as well the Justices as other Lay-men, being assembled, the Justices affirmed precisely, *&c.* After the recital of Particulars, the words are, It is ordained and agreed in the same Parliament.

(*f*) *Id. Anno* 1323. 17 *E.* 2. *fol.* 91.

The King's Council and Justices affirm.

Anno 1326. the last of *Ed.* 2. There is a Prorogation of the (*g*) Parliament, before meeting, which runs thus, That though the King had intended *Colloquium & Tractatum*, Conference and Treaty in the *Quindene* of St. *Andrew*, by *Isabel* the Queen, and *Edward* his eldest Son, *Custos* of the Kingdom (the King then being beyond Sea,) and the Prelats, *Proceres, & Magnates Regni*, and so had commanded two Knights of the Community of the County, two Burgesses of every Burrough; (*h*) yet for certain causes necessary and profitable, he hath prorogued the said Parliament and Treaty unto the day after *Epiphany*, *&c.*

(*g*) *Claus.* 20 *E.* 2. *m.* 4. *dorso.* A Prorogation before Meeting.

(*h*) *Quia tamen quibusdam de causis necessariis & utilibus prædict. Parliamentum & Tractatum usque in crastinum Epiphaniæ prox. jam futur. &c. duximus prorogandum.*

Of the Parliaments in King Edward *the Third's time.*

THE Preface to the Statutes at (*a*) *Westminster*, 1 *Ed.* 3. is thus: To the Honour of God, *&c.* King *Ed.* 3, at his Parliament held at *Westminster*, *&c.* at the request of the Commonalty of his Realm, by the Petition made before him and his Council in the Parliament, by assent of the Prelates, Earls, Barons, and other great Men assembled at the said Parliament,

(*a*) *Pulton, An.* 1327. *fol.* 93. Petition made by the Commonalty to the King and his Council.

ment, hath granted for him and his Heirs for ever, theſe Articles.

The title of the Statute made at (*b*) *Weſtminſter*, 27 *Nov.* 4 *Ed.* 3. is thus. At the requeſt of the Commons theſe things be Eſtabliſhed, and Enacted by our Lord the King, his Prelates, Earls, and Barons, and other of the ſame Parliament.

(*b*) *Idem, Anno* 1329. *fol.* 97.

Eſtabliſhed and enacted by the King, Prelates, &c.

So that at *Weſtminſter* (*c*) 5 *Ed.* 3. Our Lord the King by the Aſſent of the Prelates, &c. and other Great Men, and at the requeſt of his People, hath granted and eſtabliſhed.

(*c*) *Idem, Anno* 1331. *fol.* 100.

The Preamble to the Statutes at *York* (*d*) 9 *E.* 3. runs thus, It was ſhewed to our Lord the King, by the Knights of the Shires, Citizens of the Cities, and Burgeſſes of Burroughs which come for the Commons of the ſaid Shires, Cities and Burroughs, Our Lord the King, &c. by the Aſſent of his Prelates, &c. and other Nobles of this Realm ſummoned at this Parliament, and by the Advice of his Council, being there; Upon the ſaid things diſcloſed to him, Ordains, &c.

(*d*) *Idem, Anno* 1335. *fol.* 103.

Shewed by the Knights, &c. for the Commons; aſſented to by the Lords, with the Advice of the King's Council.

So the Statute at (*e*) *Weſtminſter* 10 *E.* 3. is, Our Lord the King by the Aſſent of the Prelates, &c. and at the Requeſt of the Knights of Shires, and his Commons by their Petition, hath Ordained, Eſtabliſhed, &c.

(*e*) *Idem, Anno* 1336. *p.* 105.

The Preamble to the Statute for the Clergy, 16 *Apr.* 14 *E.* 3. runs thus, At the Petition of *John* Archbiſhop of *Canterbury*, and other Prelates, upon deliberation had with the Peers of our Realm, and other of our Council, and of the Realm ſummoned to our ſaid Parliament.

Thus far we find the King Eſtabliſhing and Ordaining upon the Petition of the Commons, as alſo of the Prelates, with the Aſſent of the Prelates and Nobility and his Council. Before I proceed to thoſe Statutes which mention the aſſent or advice of the whole Parliament, I think fit to inſert at large, the Repeal of an imperfect Statute made 15 *E.* 3.

There having been (*f*) a Statute made, That Miniſters of the Church ſhould not anſwer before the Kings Juſtices for things done touching the Juriſdiction of the Church: For what reaſons, and in what manner this was repealed, will beſt appear by the Kings Precept to the Sheriff of *Lincoln*, which runs thus:

(*f*) *Idem, Anno* 1541. 15 *E.* 3. *fol.* 115.

Repeal of Law unduely procured.

Whereas at our Parliament, ſummoned at *Weſtminſter*, in the *Quindene* of *Eaſter* laſt paſt, certain Articles, expreſly contrary to the Laws and Cuſtoms of our Realm of *England*, and to our Prerogatives, and Rights Royal, were pretended to be granted by us in the manner of a Statute. And conſidering, how by the Bond of our Oath we be tied to the obſervance and defence of ſuch Laws, Cuſtoms, Rights, and Prerogatives; and providently willing to revoke ſuch things to their own State which be ſo improvidently done. Upon Conference and Treatiſe thereupon, with the Earls, Barons and other Wiſe Men of our ſaid Realm; and becauſe we never conſented to the making of the ſaid Statute, but as it then behoved

us, we diſſimuled in the Premiſſes, by Proteſtations of Revocation of the ſaid Statute, if indeed it ſhould proceed, to eſchew the danger, which by denying the ſame we feared to come, for as much as the ſaid Parliament otherwiſe had been, without diſpatching any thing, in diſcord diſſolved, and ſo our earneſt buſineſs had likely been ruinated, which God prohibit, and the ſaid pretended Statute we promiſed then to have ſealed.

It ſeemed to the ſaid Earls, Barons, and other Wiſe Men, that ſithence the Statute did not of our Free Will proceed, the ſame be void, and ought not to have the name or ſtrength of a Statute, and therefore by their counſel and aſſent we have decreed the ſaid Statute to be void, and the ſame as much as it proceeded of Dread we have agreed to be adnulled.

Nevertheleſs, that the Articles contained in the ſaid pretended Statute, which by other of our Statutes, or of our Progenitors Kings of *England*, have been approved, ſhall according to the form of the ſaid Statute, in every point, as convenient is, be obſerved, and the ſame we do only for the Conſervation and Redintegration of the Rights of our Crown, as we be bound, and not that we ſhould in any wiſe grieve or oppreſs our Subjects, whom we deſire to rule in lenity and gentleneſs. So the King commands all theſe things to be openly Proclaimed, 1 *Oct.* 15 *Regni.*

Obſervations upon it.

From this Statute we may 1*ſt.* obſerve, That without the Kings free and expreſs conſent, there can be no Law paſs'd. 2*ly.* The Biſhops are not mentioned in this, it being contrary to ſome Liberties Churchmen claimed by the Canons. 3*ly.* The Kings aſſent was not compleat, but only a temporary one, like a *Salvo Jure*, leſt his earneſt buſineſs for which he called them ſhould miſcarry for want of a ſeeming compliance; therefore he is ſaid to promiſe the Sealing of it (which was in that Age the Characteriſtick of Confirmation) but never did it, but rather made ſome kind of Proteſtation in the preſence of ſome, that what he did was unwillingly. 4*ly.* That ſeeing it did not proceed of his Free Will, therefore by the advice and conſent of the Earls, Barons, and other Wiſe Men, it is declared void: *Laſtly*, The principal reaſon why he gave not his free conſent to it, was becauſe it was againſt his Coronation Oath, whereby he was tied to the obſervance, and defence of the Laws, Cuſtoms, Rights, and Prerogatives: So that upon the whole, they that would adviſe their Princes to conſent to whatever Bills the Houſes ſhould tender (as in the Chapter of Factious Members of Parliament I ſhall have occaſion to diſcourſe) may learn from hence, That the King found himſelf obliged to conſent to no Bills contrary to the Law, Cuſtoms, Rights and Prerogatives: ſuch were thoſe the unhappy Parliament of 41 in the point of the Militia, and their other dethroning Bills; and of late, another Parliament in the Bill of Excluſion, endeavoured to impoſe upon their Soveraigns, contrary to the fundamental Laws and Prerogatives of the Crown.

Kings not bound to conſent to what Bills the Houſes propoſe.

To

To proceed, The Preface of the Statute at (g) *Weſtminſter*, *7th. May* 20 *E.* 3. runs thus, Becauſe that by divers complaints made to us, we have perceived, that the Law of the Land (which we by our Oath are bound to maintain) is the leſs well kept, *&c.* we greatly moved of Conſcience in this matter, *&c.* by the aſſent of the great Men, and other Wiſe Men of our Council, We have ordained, *&c.*

(g) *Id.* 1346. *fol.* 118.

The Preamble to the Statute of Labourers (*h*) repealed 23 *E.* 3. was thus, Upon deliberation, and treaty with the Prelates, and the Nobles, and learned Men aſſiſting us, of their mutual aſſent ordained; and that Statute for Labourers which remains in force, 25 *E.* 3. ſaith, Whereas it was ordained by our Lord the King, and by aſſent of the Prelates, Earls, Barons, and others of his Council, *&c.*

(*h*) *Idem, Anno* 1349. *fol.* 120.

It is apparent by ſeveral Records, That the Kings of *England* have not been tied to the certain number of Knights, Citizens, and Burgeſſes, though for a long while, two only have been choſen of each; but heretofore, ſometimes but one, other times two or three, as that 18 *E.* 1. and 4 Knights 22 *E.* 1.

So one Knight for a County, when two Burgeſſes, 27 *E.* 3. So the King names one Knight, one Citizen, and one Burgeſs to be ſent, 43 *E.* 3. *m.* 2.

Beſides which liberty there is a (*i*) memorable Record in this Kings Reign, wherein the King appointed the qualifications of ſuch as were to be choſen Members of the Houſe of Commons.

(*i*) *Cl.* 24 *E.* 3. *p.* 2. *m.* 3.

The Writ is directed to all the Sheriffs of *England*, *Quod de Comitatu tuo duos Milites, &c. de diſcretioribus & probioribus Militibus, Civibus, & Burgenſibus, & ad laborandum potentioribus, qui non ſint Placitatores, querelarum manutentores, aut ex hujuſmodi quæſtu viventes, &c. ſed homines valentes, & bonæ fidei, & publicum commodum diligentes, eligi.*

Qualification of Members to be elected.

Pleading Lawyers, Maintainers of Plaints, and ſuch as lived of ſuch like gain were forbid to be choſen upon ſome particular Reaſon of State then inducing it, of which I ſhall write ſomething in the Chapter of Parliaments.

The other Preambles moſt (*k*) remarkable in this Kings Reign, are moſtly, By the aſſent of the Prelates, Earls, Barons, and other great men, and all the Commons, or of all the Commonalty of the Kings Realm. The King hath Granted, Ordained, Eſtabliſhed, *&c.*

(*k*) *Pulton, An.* 1350. *fol.* 121. 25 *E.* 3. *Idem, Anno* 1350. *fol.* 125.

Aſſent of the Commonalty.

The Statute for the Clergy (*l*) 25 *Regni*, ſaith, Our Lord the King ſeeing and examining by good deliberation, the Petitions and Articles delivered to him in his Parliament, *&c.* by *Simon* Archbiſhop of *Canterbury*, and other Biſhops of his Province, upon certain Grievances, *&c.* by the aſſent of his Parliament, for him and his Heirs, willeth and granteth the Points underwritten.

(*l*) *Idem, Anno* 1350. *fol.* 122.

By the Aſſent of his Parliament.

The Statute of Proviſors, 25 *E.* 3. is (*m*) ſingular in its Preamble, That whereas, in the Parliament 15 *E.* 1. at *Carliſle*, the Petition heard, put before the ſaid King and his Council in his ſaid Parliament, by the Commonalty of the ſaid Realm, containing, *&c.* whereupon the ſaid Commons have prayed our Lord the King, that

(*m*) *Id.* 1350. *fol.* 129. 25 *E.* 3.

The King bound by his Oath to remedy Miſchiefs and Damages to his Realm, by accord of his People in Parliament.

that ſith the right of the Crown of *England*, and the Law of the ſaid Realm, is ſuch, That upon the Miſchiefs and Damages which happen to his Realm, he ought, and is bound by his Oath, with the accord of his People in his Parliament, thereof to make Remedy and Law, and remove the Miſchiefs and Damages, which thereof enſue, ſo pray the King thereupon to ordain Remedy.

(*n*) *Id.* 1353. *fol.* 131. The Statute of Proviſors (*n*) 27 *E.* 3. runs, Our Lord the King, by the Aſſent, and Prayers of the Great Men, and Commons of this Realm, *&c.* hath ordained.

(*o*) *Idem, Anno* 1353. *fol.* 133. The Statute of (*o*) Staple 27 *E.* 3. hath a ſingular Preface whereas good deliberation had with the Prelates, Dukes, Earls, Barons and Great Men of the Counties, that is to ſay, of every County one, for all the Counties; and ſo of Cities and Burroughs, *&c.* by the Council and common conſent of the ſaid Prelates, *&c.* Knights and Commons, the King hath ordained, *&c.* In the 28. *Princes* are named after *Prelates.*

One Knight for a County, and ſo for Cities and Burroughs.

(*p*) *Idem, Anno* 1362. *fol.* 152. The Requeſt of the Commons. The Preamble of the Statute at (*p*) *Weſtminſter* 36 *E.* 3. runs thus, The King at the requeſt of the Commons, by their Petition delivered to him in the ſaid Parliament, by the Aſſent of the Prelates, Dukes, Earls, Barons, and other Great Men in the Parliament aſſembled, have granted for him and his Heirs for ever, the Articles underwritten.

In the Second Chapter, of which it is ſaid, The King of his own Will, without motion of the Great Men, or Commons, hath granted in eaſe of his People.

(*q*) *Idem, Anno* 1368. *fol.* 159. The Statutes made (*q*) 42 *E.* 3. have only, At the Parliament of our Lord the King, it is aſſented and accorded. So

(*r*) *Idem, Anno* 1369. *fol.* 190. in (*r*) 43 *E.* 3. The Prelates, Great Men, and Commons ſeeing the Miſchiefs, pray the King in this preſent Parliament thereupon to ordain Remedy.

(*s*) *Idem, Anno* 1376. *fol.* 191. The Preamble to the Statutes (*s*) 50 *E.* 3. runs thus, The Prelates, Dukes, Earls, Barons, and others aſſembled at the Parliament, *&c.* Our Lord the King deſiring much, that the Peace of his Land be well kept, and his faithful Subjects in quietneſs and tranquillity maintained, hath therefore made and ordained certain Ordinances, and alſo granted certain Graces and Pardons to his Commons of *England.*

In all which, it is evident, the Two Houſes had no more but an Adviſing, or Petitioning and Aſſenting Power. It is every where expreſſed that the King ſolely Ordaineth, Eſtabliſheth, Granteth. However he owns an obligation by his Coronation Oath to make good Laws for his Subjects.

CHAP.

CHAP. XXVII.

Of the Parliaments of England, *during the Reigns of King* Richard *the Second, to the First Year of King* James *the Second.*

THE Preface to the Statutes at (a) *Weſtminſter*, 10 *R.* 2. is thus, *Richard* by the Grace of God, *&c.* to the Sheriff of *Nottingham*, Greeting; Know you, That to the Honour of God, *&c.* by the whole Aſſent of the Prelates, Dukes, Earls and Barons of this our Realm, at the inſtance and ſpecial Requeſt of the Commons of our Realm, aſſembled at our Parliament, We have ordained and eſtabliſhed certain Statutes in amendment and relief of this our ſaid Realm.

(a) *Pulton, An.* 1377. *fol.* 163.

Special Inſtance and Requeſt of the Commons.

That at (b) *Glouceſter*, 2 *R.* 2. is thus, Our Lord the King at his Parliament, *&c.* amongſt other things there aſſented and accorded, hath made certain Statutes and Ordinances.

(b) *Idem, Anno* 1378. *fol.* 165.

The Preface to the Statutes at (c) *Weſtminſter*, the ſame year, runs thus, Our Lord the King, *&c.* of the Aſſent of the Prelates, Dukes, Earls, Barons and other great Men, and of the Commons of this Realm ſummoned, *&c.* hath ordained.

(c) *Anno* 1379. *fol.* 167.

In the firſt Chapter of the Statutes at (d) *Northampton*, 4 *R.* 2. it is thus, The Commons of our Parliament have prayed us, by their Petition delivered to us, at our preſent Parliament, *&c.* We conſidering the ſaid Supplication, will and grant by the Aſſent of the Prelates and Lords aforeſaid.

(d) *Idem, Anno* 1380. *fol.* 169.

In the Fourth Chapter of the Statutes at (e) *Weſtminſter*, 5 *R.* 2. The Members accuſtomed to be ſummoned to Parliament, are particularly by their Degree diſtinguiſhed, *viz.* Archbiſhops, Biſhops, Abbats, Priors, Dukes, Earls, Barons, Bannerets, Knights of the Shires, Citizens and Burgeſſes, which laſt are frequently comprehended by the words *Others* or *Commonalty.*

(e) *Idem, Anno* 1382. *fol.* 175.

The Preamble to the Statutes 8 *R.* 2. at (f) *Weſtminſter*, is to the Honour of God, and at the Requeſt of the Commonalty, of the Aſſent of the Prelates, Great Men and Commons aforeſaid, Our Lord the King hath cauſed to be made.

(f) *Idem, An.* 1384. *fol.* 179.

Aſſent of Commons.

The Statutes 9 *R.* 2. at (g) *Weſtminſter*, are thus prefaced, Our Lord the King of the Aſſent of the Prelates, Dukes, Marqueſſes, Earls, Barons and Commons, hath ordained and eſtabliſhed.

(g) *Idem, Anno* 1385. *fol.* 179.

The (h) Preface to the Statute 10 *R.* 2. is very full in the Expreſſions of the kindneſs of the King to his Subjects in this Form, Know ye for the Reverence of God, and to nouriſh Peace, Unity and good Accord, in all Parties within the Realm, and eſpecially for the common Profit and Eaſe of our People, and good Government of the ſame (which we chiefly deſire) of the Aſſent of the Lords and Commons aſſembled in Parliament, we

(h) *Idem, Anno* 1386. *fol.* 180.

Aſſent of the Lords and Commons.

we have cauſed to be made a Statute. So in the 11*th. Regni* (*i*) the King heartily deſiring, That the Peace of the Land, be well holden and kept, and his faithful Subjects nouriſhed and governed in Quietneſs and Tranquillity; and in that at *Weſtminſter* (*k*) 13 *Regni*, For the Honour of God and Holy Church, and for the common profit of his Liege People.

(*i*) *Idem, Anno* 1387. *fol.* 181.

(*k*) *Idem, Anno* 1388. *fol.* 182.

In the Firſt Chapter of the Statute at (*l*) *Weſtminſter*, 13 *R.* 2. it is thus expreſſed, That our Lord the King, at his Parliament holden at *Weſtminſter*, *&c.* hearing the grievous Complaints of his ſaid Commons, *&c.* the more becauſe Charters of Pardons have been eaſily granted in ſuch Caſes; the Commons requeſted, that ſuch Charters might not be granted. To whom the King anſwered, That he will ſave his Liberty and Regality as his Progenitors have done heretofore: But to nouriſh the more Quietneſs and Peace within this Realm, by the Aſſent of the Great Men and Nobles he hath granted, *&c.*

(*l*) *Anno* 1389. *fol.* 189.

Grievous Complaints of the Commons.

The King will ſave his Liberty and Regality.

In the (*m*) Statute 20 *R.* 2. By the Aſſent of the Prelates, Lords and Commons, The Title of the Statutes at (*n*) *Weſtminſter* 21 *R.* 2. is thus, It is to be underſtood, that our Lord the King, *&c.* of the Aſſent of the Prelates, Dukes, Earls, Barons and Commons of his Realm there aſſembled, hath made certain Statutes and Ordinances. Amongſt the reſt is a Repeal of the Statutes made 10 *R.* 2. For that they were made by Threats given to the King, and by conſtraint.

(*m*) *Idem, Anno* 1396. *fol.* 199.

(*n*) *Idem, Anno* 1397. *fol.* 200.

Repeal of Statutes made by Threats.

So it may be noted, That *Henry* the Fourth repealed all the Statutes made in the laſt Parliament, 21 *R.* 2.

Of the Parliaments in King Henry *the Fourth's time.*

(*a*) *Idem, Anno* 1399. *fol.* 200.

THE Preamble to the Statute at (*a*) *Weſtminſter* 1 *H.* 4, runs thus, *Henry* by the Grace of God, *&c.* to the Laud and Honour of God, and Reverence of Holy Church, for to nouriſh Unity, Peace and Concord, of all Parties within the Realm of *England*, and for redreſs and recovery of the ſame Realm of *England*, which now of late hath been dangerouſly put to great Ruin, Miſchief and Deſolation, of the Aſſent of the Prelates, Dukes, Earls, Barons; and at the Inſtance and ſpecial Requeſt of the Commons of the ſame Realm aſſembled, *&c.* hath made, ordained and eſtabliſhed, certain Ordinances and Statutes. Throughout all this Kings Reign, moſt of the Prefaces are much the ſame, By the Aſſent, or Advice and Aſſent of the Prelates, *&c.* At the Requeſt or ſpecial Inſtance and Requeſt of the Commons.

Inſtance and ſpecial Requeſt of the Commons.

Only in the Preface to ſome, it is, By the Aſſent and Advice of the Lords Spiritual and Temporal: this Diſtinction being moſtly brought into uſe in his time, as may be ſeen in the 4*th.* 6*th.* and 9*th.* of his Reign.

Aſſent of the Lords Spiritual and Temporal.

Of

Of the Parliaments in King Henry *the Fifth's time.*

THE Preamble to the Statutes at (a) *Weſtminſter* 1 *H.* 5. runs thus, Our Lord the King at his *Parliament*, *&c.* by the Advice and Aſſent of the Lords Spiritual and Temporal, and at the ſpecial Inſtance and Requeſt of the Commons of this Realm, hath ordained, eſtabliſhed, *&c.* and ſo much like all the reſt, except the Statutes 4 *H.* 5. (b) which hath, Our Lord the King, with the Aſſent of the Prelates, Dukes, Earls, Barons, and at the ſpecial Inſtance and Requeſt of the Commons.

(a) *Idem, Anno* 1413. *fol.* 224.

(b) *Idem, Anno* 1416. *fol.* 234.

Of the Parliaments in King Henry *the Sixth's time.*

THE Preamble to the Firſt Statute of (a) *Weſtminſter*, 1 *H.* 6. is thus, At the Parliament held at *Weſtminſter*, &c. Our Sovereign Lord the King, by the Advice and Aſſent of the Lords Spiritual and Temporal, and at the ſpecial Inſtance and Requeſt of the Commons of the Realm, *&c.* hath cauſed to be ordained and eſtabliſhed, *&c.* The 2*d.* 3*d.* 4*th.* and 6*th.* of *H.* 6. are the ſame.

(a) *Idem, Anno* 1422. *fol.* 239.

Sovereign Lord the King.

As the firſt Statutes, call him Our Sovereign Lord, which was not uſed formerly; ſo in that of the 8*th.* of *H.* 6. he is ſtiled Our moſt Noble Chriſtian Lord *Henry*, &c.

11 *Regni* (b) part of a new Phraſe was uſed, By Authority of Parliament, which after ſome while is now familiarly uſed; that Preface runs thus, By the Aſſent of the Lords Spiritual and Temporal, and at the ſpecial Requeſt of the Commons in his ſaid Parliament aſſembled, by Authority of the ſame Parliament, Our Sovereign Lord the King hath ordained and eſtabliſhed divers Statutes, Declarations and Ordinances.

(b) *Idem, Anno* 1433. *fol.* 261.

By Authority of the ſaid Parliament.

The Preface to the Statutes at (c) *Reading*, 31 *Regni* hath theſe words, Our Lord the King, by Aſſent of the Lords Spiritual and Temporal, and the Commons, being in the ſaid Parliament, and by Authority of the ſame Parliament, hath made, ordained and eſtabliſhed divers Acts and Statutes. Here the Commons Aſſent is joyned with the Lords, whereas in moſt others of his Reign it is, At the ſpecial requeſt of the Commons.

So it is in that at *Weſtminſter*, which is like the firſt; only it ſaith, Our Sovereign Lord, *&c.* the Thirty ninth of his Noble and Gracious Reign.

(c) *Idem, Anno* 1452. *fol.* 286.

Of the Parliaments in King Edward *the Fourth's Reign.*

THE Preamble to the Statutes of (a) *Weſtminſter*, 1 *Regni*, is, *Edward* by the Grace of God, *&c.* to the Honour of God and Holy Church, to nouriſh Peace, Unity and Concord within his Realm (which he much deſireth) by the Advice and Aſſent of the Lords Spiritual and Temporal of the ſame

(a) *Idem, Anno* 1461. *fol.* 291.

King *Edward* by the Grace of God.

ſame Realm, and at the ſpecial Requeſt of the Commons of his ſaid Realm aſſembled, by Authority of the ſame Parliament, hath ordained.

The reſt of the Prefaces vary very little, except that in the 3 *E.* 4. it is, By the Advice and Aſſent of his Lords Spiritual and Temporal, and the Commons, *&c.*

Of the Parliament in King Richard *the Third's time.*

(a) *Idem, Anno* 1483. *fol.* 315.

THE Preamble to the Statutes at (a) *Weſtminſter*, 1 *R.*3. runs thus, *Richard* by the Grace of God, *&c.* to the Honour of God and of Holy Church, and for the Commonwealth of his Realm of *England*, &c. By the Advice and Aſſent of the Lords Spiritual and Temporal, and at the Requeſt of the Commons of the ſaid Realm, ſummoned to the ſaid Parliament, by the Authority of the ſame Parliament, hath ordained and eſtabliſhed, for the Quietneſs of his People, certain Statutes.

Advice and Aſſent of Lords Spiritual and Temporal, and Requeſt of the Commons.

Of the Parliaments in King Henry *the Seventh's time.*

(a) *Idem, Anno* 1485. *fol.* 324.

THE Prefaces to all the Acts in his (a) Reign, are much alike, thus, The King our Sovereign Lord *Henry*, &c. To the Honour of God, *&c.* By the Aſſent of the Lords Spiritual and Temporal, and the Commons in the ſaid Parliament aſſembled, and by Authority of the ſaid Parliament, hath done to be made certain Statutes and Ordinances.

Of the Parliaments in King Henry *the Eighth's time.*

MOST of the Prefaces to the 20*th.* of his Reign are the ſame as in King *H.* the 7*th. mutatis mutandis.*

(a) *Id.* *fol.*392. The Title of the 21 *H.* 8. (a) only is, *Statuta ad Rempublicam ſpectantia edita in* 1 *Seſſione Parliamenti*, &c. *Anno Regni invictiſſimi Principis Henrici*, &c.

(b) *Id.* *fol.*435. The King our Sovereign Lord.

In the 5*th.* Chapter of the Acts of the (b) 24*th.* of his Reign, it is thus, Be it enacted by the King our Sovereign Lord, with the Aſſent of the Lords Spiritual and Temporal, and the Commons of this preſent Parliament aſſembled, and by Authority of the ſame: So moſt of the reſt are, excepting

(c) *Id.* *fol.*465. that in the ſecond Chapter of the 26. of (c) his Reign, it is ſaid, Therefore be it enacted by Authority of this preſent Parliament.

(d) *Id.* *fol.*485. May it pleaſe the King, *&c.* it be enacted.

So in the firſt Chapter of the (d) 28 *Regni*, it is ſaid, For the Remedy whereof, may it pleaſe the King our Sovereign Lord, by the Aſſent, *&c.* it may be enacted.

(e) *Id.* *fol.*537. *H.* 8. Defender of the Faith, and in Earth Supreme Head, *&c.*

The Title of the Acts 31 *H.* 8. (e) runs thus, *Henry* the 8*th. &c.* Defender of the Faith, and in Earth ſupreme Head immediately under Chriſt, of the Church of *England*, to the Honour of Almighty God, Conſervation of the true Doctrine

of

of Chriſtian Religion, and for the Concord, Quiet, and Wealth of this his Realm, and Subjects of the ſame, held his moſt high Court of Parliament, *&c.* wherein were eſtabliſhed theſe Acts following: and in the firſt Chapter it is ſaid, Be it enacted by the King, our dread Sovereign Lord, and by the aſſent of the Lords, Spiritual and Temporal, and by the Commons of this preſent Parliament aſſembled. Be it enacted, *&c.*

The Thirty ſecond of *H.* 8. hath theſe Expreſſions, which day the ſaid Parliament continued by divers Prorogations, was by His Graces Authority finiſhed and diſſolved, amongſt many other the Acts following, By his Highneſs, with the aſſent of the Lords, Spiritual and Temporal, and the Commons aſſembled in the ſaid Parliament, have been Eſtabliſhed, Ordained, and Enacted.

Of the Parliaments in King Edward *the Sixth's Reign.*

IN the firſt Chapter of the firſt (*a*) Statutes made 1. *Regni*, it is ſaid, The Kings moſt Excellent Majeſty, minding the Governance and Order of his moſt loving Subjects to be in moſt perfect Unity and Concord in all things, *&c.* as his moſt Princely Serenity and Majeſty, hath already declared by evident Proofs. Be it enacted by the Kings Highneſs, with the aſſent of the Lords, Spiritual and Temporal, and of the Commons of this preſent Parliament aſſembled, and by the Authority of the ſame. (*a*) *Id.* *fol.*687. King's Excellent Majeſty— Princely Serenity— Highneſs.

In the ſecond and third Year of *Ed.* 6. they are called (*b*) Acts in the Seſſion, *&c.* humbly prayen, That it may be Ordained, and Enacted by His Majeſty, with the aſſent of the Lords and Commons in this preſent Parliament aſſembled, and by the Authority of the ſame. (*b*) *Id.* *fol.*712.

The reſt are much, what like thoſe foregoing.

Of the Parliaments in Queen Mary's *Reign.*

IN the Title of her firſt (*a*) Acts, ſhe is ſtiled, *Defender of the Faith*, and *Supreme Head of the Church*, *&c.* Be it therefore ordained and enacted by the Queen our Sovereign Lady, with the aſſent of the Lords, Spiritual and Temporal, and of the Commons in this preſent Parliament aſſembled, and by the Authority of the ſame. (*a*) *Id.* *fol.*817. Ordained and enacted by the Queen our Sovereign Lady, and Aſſent of Lords Spiritual and Temporal, and Commons.

After the Marriage of (*b*) Queen *Mary*, with King *Philip* of *Spain*, the title is only, Acts made in the Reign of our Sovereign Lord and Lady, *Philip* and *Mary*, Defenders of the Faith, leaving out *Supreme Head*, *&c.* (*b*) *Id.* *fol.*831.

In the fourth and (*c*) fifth of *Philip* and *Mary*, in the Body of the Acts, it is thus, Be it Enacted, Ordained, and Eſtabliſhed by the King and Queens Majeſty, the Lords Spiritual and Temporal, and the Commons in this preſent Parliament aſſembled, and by the Authority of the ſame. (*c*) *Id.* *fol.*863.

Of the Parliaments in Queen Elizabeth's *time.*

WE may obſerve ſomething new in the Acts of this Queen; we have noted once in *Henry* the Eighth's time, the two Houſes pray that it may be enacted, and ſo in *Edward* the Sixth: but in the firſt (*a*) Chapter of the Acts of this Queen, it is more full thus, Moſt humbly beſeech your moſt excellent Majeſty, your faithful and obedient Subjects, the Lords, Spiritual and Temporal, and the Commons of this your preſent Parliament aſſembled; and in another (*b*) Paragraph, That it may pleaſe your Highneſs that it may be further enacted; and in another place, If ſome redreſs (by Authority of this your High Court of Parliament, with the aſſent of your Highneſs) be not had and provided.

(*a*) *Id.* *fol.*873. Moſt humbly beſeech Your moſt Excellent Majeſty.

(*b*) *Id.* *fol.*874. High Court of Parliament.

5 *Eliz. Cap.* 1. it is thus expreſſed, Be it therefore Enacted, Ordained, and Eſtabliſhed by the Queen our Sovereign Lady, and the Lords Spiritual and Temporal, and the Commons in this preſent Parliament aſſembled, and by Authority of the ſame. And in the Eighth, Be it now Declared and Enacted by the Authority of this preſent Parliament.

Moſt of all the reſt of the Acts of her Reign are expreſſed after ſome of theſe forms.

The 43 of her Reign, in the Firſt Chapter it is thus, In moſt humble wiſe beſeechen your moſt excellent Majeſty, the Lords Spiritual and Temporal, and the Commons of your Highneſs's Parliament aſſembled.

Of the Parliaments in King James *the Firſt's Reign.*

(*a*) *Id.* *fol.*1085. THE Title of his firſt (*a*) Acts is at the Parliament begun, *&c.* To the pleaſure of Almighty God, the Weal publick of this Realm, were Enacted, *&c.*

In the Firſt Chapter, We therefore, your moſt Humble and Loyal Subjects, the Lords Spiritual and Temporal, and the Commons in this preſent Parliament aſſembled, in moſt humble and lowly manner, do beſeech your moſt excellent Majeſty, that it may be publiſhed and declared in this High Court of Parliament, and Enacted by Authority of the ſame.

In moſt humble and lowly manner do beſeech.

(*b*) *Id.* *fol.*1086. In the Second Chapter it is ſaid, Be it further (*b*) Enacted by the Kings moſt Excellent Majeſty, by, and with the Aſſent and Conſent of the Lords Spiritual and Temporal, and the Commons in this preſent Parliament aſſembled, and by Authority of the ſame.

In the Seventh of King *James*, is only expreſſed, Be it Enacted by the Authority of this preſent Parliament, *&c.* The reſt agrees with ſome of theſe.

Of

Of the Parliaments in King Charles *the Firſt's Reign.*

THE Preface of his Firſt (*a*) Parliament, is, At the Parliament, *&c.* To the high pleaſure of Almighty God, and to the weal publick of this Realm were Enacted, *&c.* (*a*) *Id.* *fol.* 1226.

In the Firſt Chapter (*b*) it is ſaid, Be it Enacted by the Kings moſt excellent Majeſty, the Lords Spiritual and Temporal, and the Commons in this preſent Parliament aſſembled, and by the Authority of the ſame. (*b*) *Id.* *fol.* 1227. Be it enacted by the King, *&c.*

In the beginning of the Petition (*c*) of Right it is thus worded, Humbly ſhew unto our Soveraign Lord the King, the Lords Spiritual and Temporal, and Commons in Parliament aſſembled, *&c.* and the cloſe of it is, All which they moſt humbly pray your moſt excellent Majeſty, as their Rights and Liberties according to the Laws and Statutes of this Realm, *&c* and that your Majeſty would be graciouſly pleaſed. (*c*) *Id.* *fol.* 1229. Petition of Right.

In the Seventeenth of the ſaid King, (*d*) Chap. 6. it is thus expreſſed, Therefore the Kings moſt excellent Majeſty, out of his Princely care, *&c.* by the Aſſent of the Lords Spiritual and Temporal, and Commons in this preſent Parliament aſſembled, and by the Authority of the ſame, Ordaineth, Enacteth, and Eſtabliſheth. (*d*) *Id.* *fol.* 1237.

Of the Parliaments in King Charles *the Seconds Reign.*

THE Preface to the Acts of the two Houſes (*a*) begun 25 *Apr.* 1660. not ſummoned by the Kings Writ, is much the ſame with that of King *Charles* the Firſt, and King *James*, *mutatis mutandis.* In the Third Chapter it is ſaid, Be it Enacted by the Kings moſt excellent Majeſty, and the Lords and Commons aſſembled in Parliament. In the Fourth Chapter, (*b*) The Commons do by and with the Advice and Conſent of the Lords in this preſent Parliament, and by Authority of the ſame, give and grant unto you our Supreme Liege Lord and Soveraign one Subſidy, *&c.* (*a*) *Id.* *fol.* 1249. (*b*) *Id.* *fol.* 1251. Supreme Liege-lord and Sovereign.

In the Firſt Chapter 13 *Car.* 2. the (*c*) enacting part is thus worded, Do moſt humbly beſeech your moſt Excellent Majeſty, that it may be Enacted, and be it Enacted by the Kings moſt Excellent Majeſty, by and with the Advice and Conſent of the Lords and Commons in this preſent Parliament Aſſembled, and by Authority of the ſame. The reſt of the Acts in King *Charles* the Second's Reign, are continued in the ſame form. (*c*) *Id.* *fol.* 1300. Moſt humbly beſeech Your moſt Excellent Majeſty, *&c.*

The Titles of the Acts of Parliament, 1 *Jac.* 2. our moſt Gracious Soveraign, are, At the Parliament begun at *Weſtminſter* the 19*th.* Day of *May*, *Anno Dom.* 1685. in the Firſt Year of the Reign of our moſt Gracious Soveraign Lord *James*, *&c.*

The Enacting part of the granting an Impoſition, *&c.* thus, Moſt Gracious Soveraign, We your Majeſties moſt Dutiful and

Loyal Subjects, the Commons Aſſembled in Parliament, towards a Supply, *&c.* and with an humble and thankful acknowledgment of your Majeſties favourable and tender regard to us your Commons, have chearfully and unanimouſly given and granted unto your Majeſty, an Aid and Aſſiſtance——and we do humbly beſeech your Majeſty, that it may be Enacted, and be it Enacted by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons in this preſent Parliament aſſembled, and by the Authority of the ſame.

All the other Acts which are not Grants of Aid, Aſſiſtance, or Supply, are conceived in the latter words.

By this full enumeration of the moſt conſiderable Expreſſions, either of Records or Hiſtorians, relating to the Great Councils or Parliaments from *William the Conqueror's* time to this preſent Age, (which in a continued ſeries of time I have deduced, it appears, that till King *John*'s time, only the Prelates, Earls, and Barons, and ſuch of the great Tenents *in Capite* as were not Barons, were ſummoned, and at the Kings pleaſure by ſpecial Writ; and after King *John*'s Charter, the leſſer Tenents *in Capite* by General Summons. Alſo, that the Charters of Kings wherein they granted Liberties to their Subjects were received as Laws, and gave as ample Satisfaction as now *The King willeth*, doth to paſs a Bill tendred for his Royal Aſſent by both Houſes; and there was good reaſon, becauſe it paſſed under his Broad Seal.

Likewiſe, when the Conſtitution of Parliament was altered, 49 *H.* 3. whereby in place of the Tenents *in Capite*, which were numerous, two Knights were choſen, probably by the reſt of the Tenents *in Capite* for the Shires, and two Citizens, and two Burgeſſes for Burroughs, to repreſent all thoſe that held *in Capite*, and it is likely all other their Subfeudatary Tenents; yet the number was not conſtantly obſerved, there being ſometimes Knights, and no Citizens or Burgeſſes, ſometimes one Knight, one Citizen, and one Burgeſs, other times two or three Knights, left as it ſeems to the Sheriffs, or the Chuſers Election, till after it was fixed as it now is, for two Knights, two Citizens, and two Burgeſſes, unleſs in ſome places of *Wales*, where to this Day, ſome two or three Burroughs chuſe but one or two Burgeſſes.

Likewiſe it is worth the obſerving how gradually the Advice and Aſſent hath paſs'd from the Advice of the Biſhops and Nobles to the Aſſent likewiſe, and ſometimes at their requeſt, only the King ordains; and then from the Petition of the Commons to their joyning in Advice, and after to their Aſſent, and many other material progreſſive alterations, which in this recapitulation I cannot inſiſt upon, till it hath come to that conſtitution ſo much to be valued by all wiſe *Engliſhmen*, as it is the product of the generous condeſcenſions of Gracious Kings, and the wiſe contrivance of our conſiderate Anceſtors. Therefore I ſhall now paſs to conſider our preſent Conſtitution of Parliaments.

CHAP.

CHAP. XXVIII.

Of the modern rightly conſtituted Parliaments.

SECT. I.

Of the General Uſe of Parliaments.

I Have before given an account how the *Perſian* Laws were made by the (*a*) King, his Princes, Governours, Nobles, and Captains, as in a great Council of ſeveral Orders with the Sovereign; but we have an older example in Scripture, that ſeems to be the Pattern of all great Councils, ſuch as we call Parliaments, under a Monarchy. For it is ſaid, (*b*) *Moſes* commanded us a Law, even the Inheritance of the Congregation of *Jacob*, and he was King in *Jeſurun*; when the Heads of the People, and Tribes of *Iſrael* were gathered together. Here is the King, *Moſes*, commanding a Law, and the Heads of the People, the Princes, or Houſe of Lords, and the Tribes; that is, ſome to repreſent the chief of the Tribes, like our Houſe of Commons.

(*a*) *Daniel*, *cap.* 6. *v.* 7, 8.

Great Councils in Scripture.

(*b*) *Legem præcepit nobis Moyſes hæreditatem multitudinis Jacob.*

Erit apud rectiſſimum Rex, congregatis Principibus populi cum Tribubus Iſrael. Deut. cap. 33. v. 4, 5.

The *Roman* Senate, under the Emperors, reſembled our ancient Great Councils that conſiſted of ſuch as the King convened, and of the *Patrician* and *Equeſtrian* Order. The *Comitia* bore no reſemblance with our Commons, and the *Amphictyonican* (*c*) Aſſemblies, the *Achaian*, *Bochan*, and *Pan Ætolian*, were Aſſemblies of Deputies, as the States General of *Holland*.

(*c*) Ἀμφικτυονικὸν συνέδριον.

Such Aſſemblies, in all ſorts of Governments are neceſſary; for be the Empire never ſo vaſt, and the Sovereigns Power never ſo great and uncontroulable; yet without Conſultation had with the Princes and wiſe Men, for the conſtituting Laws, and modelling the frame and methods of his Government, it would ſoon without ſuch (*d*) Buttreſſes and Underſetters, ſinking in its Foundation by its own weight, with an hideous ruſh be cruſhed into an heap of Rubbiſh.

Neceſſary in all Governments.

(*d*) *Vis conſilii expers mole ruit ſua.* Horat. lib. 3. Od. 4.

In Democracy Great Councils are needful, that thereby the (*e*) Precipitancy and fury of the Common-People, by their gravity may be attempered, the common ſort being apt to do every thing with a willful Violence, which never ſucceeds well, when not directed to a right end. If their publick affairs were not committed to a ſelect number of Truſtees, nothing would be brought to any Iſſue, ſince none can be heard, where all ſpeak, nor any good Product be from a jumble of thoſe Atoms.

(*e*) *Plato de LL.* In Democracy. *Male cuncta miniſtrat impetus.* Statius.

Ariſtocracy it ſelf conſiſts in a ſelect number of the wiſeſt and ableſt to govern; who in publick Conſultations have no private ends: Yet in the great Councils, of neither of theſe forms of

In Ariſtocracy.

of Government, is there to be found that ſtayedneſs, orderlineſs, or reſolution for the public good, as in Monarchy.

In Monarchy.

Why ſuch Aſſemblies are not only convenient, but neceſſary under Monarchy, there are many weighty Reaſons. (*f*) *Xenophon* obſerves that a ſingle Perſon ſees or hears but little, and Princes muſt have many Eyes and Ears, which in a ſpecial manner theſe Great Councils are; from all parts of the Dominions bringing notice of what is amiſs, and wants redreſs, as well as what is orderly, and wants encouragement.

(*f*) Ὀλίγα γὰρ ἂν εἷς αὐτὸς ἴδοι, καὶ εἷς ἀκούσειε. Πολλοὶ Βασιλέως ὀφθαλμοὶ, καὶ πολλὰ ὦτα. *Xenoph. Cyropæd.* 8.

Satisfactory to the Subject.

Beſides, Princes thereby have the opportunity to give their Subjects ſatisfaction in their Adminiſtration, preventing the ſurmiſes and jealouſies of the Nobility, Gentry, and common People, that he ſleights them in not calling them ſometimes to conſult about affairs of Moment.

The Prince thereby knows the Worthy Subjects.

Furthermore the Prince by ſuch congreſs, conſults his own Intereſt, in coming to the Knowledg of the moſt able, active, and popular Subjects, whereby he may ſingle out ſuch as are moſt fitted for public Imployments, to ſerve him in the ſeveral offices of Government, and all (who thus have a ſhare in the debating, and conſulting about Laws) will not only be witneſſes of the Prince's Grace and Favour, in granting ſuch as they have deſired, and aſſented to; but will be ſo many Heralds of his Wiſdom, and care of his Peoples good Government, and ſo many vigorous enforcers of the Execution of thoſe Laws they have ſo lately aſſiſted to prepare.

The Prince is skreened from Obloquy.

Likewiſe, as Privy-Counſellors, and other Officers, are ſometime as Skreens to Princes, to ward off the Obloquy of the *Mobile*, when ſomething is impoſed that may be wholeſome, though ſomething bitter to their Palates: So eſpecially are theſe great Conventions neceſſary, where uſeful Laws, though ſevere, are to be enacted, Money to be raiſed, or other Impoſitions laid upon the People, who do much more chearfully, and leſs repiningly obey, when they know (*g*) the Nobility, and their own Repreſentatives, have judged them convenient. All Men naturally loving that ſuch Impoſitions may immediately reſult from themſelves, rather than they ſhould be enjoyned by the Princes Arbitrary power, according to that of *Claudian*,

(*g*) —*Tum cætera parit,*
Turba libens ſubit, propriis quia legibus acta.

——*Obſervantior æqui*
Fit Populus, nec ferre negat, cum viderit ipſum
Auctorem parere ſibi.

The General uſe of good Parliaments is ſummed up in the (*h*) Chancellors Speech, 2 *Eliz.* thus: That the principal cauſe of their Aſſembly was, that things there propoſed, may be orderly, and diligently debated, deeply conſidered, and thereupon wiſely concluded. To examine whether any Law, already made, be too ſharp and ſore, and ſo over-burthenſome to the Subject, or over-looſe and ſoft, and ſo over-dangerous

(*h*) *MS.* Speech, *An.* 1562.

The general Benefits of Parliaments.

gerous to the State: For that *acriores ſunt morſus intermiſſæ Libertatis, quam retentæ.* He further adds, The uſe of them is to conſider the want and ſuperfluities of Laws, whether Craft, Malice or Covetouſneſs hath deviſed any ways or means to defraud the Benefit and Force of Laws; and in matter of Policy, for the more perfect upholding and eſtabliſhing the Soveraigns Royal State, and the Preſervation of the Commonweal committed to the Princes care.

Bodin (*i*) commends the Conſtitution of the Government in *England* and *Spain*, that they have Parliaments once in three Years; whereby Princes upon any imminent danger, may have recourſe to their Council and Aſſiſtance, to defend their Countries from Hoſtile Attempts, to raiſe Money for public Neceſſity, cure the Diſeaſes of the Commonweal, confirm the State, appoint Laws, hear the Complaints of the grieved, amend Male-Adminiſtration, by calling ill Mannagers to account, underſtand what the Prince otherwiſe may be ignorant of, and generally to have counſel in all things, which in Prudence are neceſſary for the happy Government of the Commonweal.

(*i*) *Lib.* 3. *de Repub. p.* 350.

Sir (*k*) *Tho. Smith* ſaith, As in War, where the King himſelf is in Perſon, with the Nobility, Gentry and Yeomanry, the Power and Force of *England* is: So in Peace and Conſultation, where the Prince is to give Life, and the laſt and higheſt Commandment, the Nobility for the higher, the Knights, Eſquires and Gentlemen for the lower part of the Commonwealth, and the Biſhops for the Clergy, be preſent to advertiſe and conſult, and ſhew what is neceſſary for the Commonwealth; every thing being adviſed with mature Deliberation, every Bill being thrice read and diſputed upon, in either Houſe apart, and after the Prince himſelf doth conſent thereto, that is the Prince's and whole Kingdoms Deed: whereupon no Man can juſtly complain, but muſt accommodate himſelf to find it juſt, good, and obey it; and concludes, that whatever the People of *Rome* might do, either in *Centuriatis*, or *Tribunitiis Comitiis*, the ſame may be done by the Parliament of *England*, which repreſenteth, and hath the Power of the whole Kingdom. Thus far of the general uſe, now to the Conſtitution.

(*k*) Commonwealth, *part* 1. *c.* 2. *p.* 37.

See *Prynne*, *part* 1. Brief Regiſter, *p.* 447.

Concerning the word *Parliament*, it is concluded by moſt, to come from the *French* word *parler*, to ſpeak; therefore before the word was uſed by our Hiſtorians, as appliable to this great Convention, the *Latin* word *Colloquium* was frequently uſed, to ſignify a Conference betwixt the King and the great Men ſummoned to conſult, adviſe, and take Counſel with the King, and among themſelves.

Of the word *Parliament.*

Yet before the word was uſed to ſignifie theſe great Aſſemblies, we find it applied to other Meetings in *William Rufus*'s time; For *Ingulphus*, Abbat of *Croyland* (ſpeaking of private Conſultations in that Abby) ſaith, That *Semannus de Lek*, (*a*) coming before the Convention in their publick Parliament,

(*a*) *Veniens coram conventu, in noſtro publico Parliamento, &c.*

ment, took his Oath of Fidelity to them, as Serjeant of their Church.

The First that is noted to uſe this word among all our Hiſtorians, is (*b*) *Matthew Paris*, *Anno* 1246. 30 *H.* 3. where he ſaith, There came to the moſt general Parliament to *London*, the whole Nobility of all the Kingdom of *England*.

(*b*) *Convenit ad Parliamentum Generaliſſimum totius Regni Angliæ, &c. p.* 674.

The firſt Mention of it on Record, is in the (*c*) Writ of Summons to the Cinque Ports, ſummoning them *ad inſtans Parliamentum noſtrum*: and the next is in the Writ of Prorogation of the (*d*) Parliament, 3 *E.* 1. where it is twice mentioned in the Writ, *generale Parliamentum noſtrum*, *& eodem Parliamento.*

(*c*) *Cl.* 49 *H.* 3. *d.* 11.

(*d*) *Cl.* 3 *E.* 1. 20. *dorſo.*

Having premiſed thus much concerning the Name and firſt uſage, I ſhall now diſcourſe of it in particular.

SECT. 2.

Of the Summons of the Prelates.

THAT the King is *Caput*, *Principium*, *& Finis Parliamenti*, as Sir *Edward Coke* notes, is obvious to all. The Summons have been conſtantly from the King, or in his Name.

The Summons only from the King.

In the former Chapters I have diſcourſed out of our Hiſtorians, that the Great Councils were always convened by the Kings: Now I come to prove it by Records, and ſhall note, firſt the Summons to the Prelates, then of the Nobles, and thirdly, of the Knights, Citizens and Burgeſſes; only noting ſome of the remarkableſt of them from Mr. *Prynn*, who hath ſo fully writ of them in his brief Regiſter of Parliamentary Writs, in four parts, and his *Brevia Parliamentaria Rediviva*, to whoſe indefatigable pains in tranſcribing ſuch an infinite of Records, all Antiquaries, Lawyers, and Stateſmen will be always beholding; though in the uſe he made of ſuch, before the late King's Reſtauration, or at leaſt, while he ſate in the long Parliament, few Loyal Men can follow his Doctrines.

All the Writs before the Sixth of King *John*, whereby any were ſummoned to great Councils, are utterly loſt: that runs (*e*) thus, *Mandamus vobis, rogantes, quatenus omni occaſione & dilatione poſtpoſita, ſicut nos, & honorem noſtrum diligitis, ſitis ad nos apud London*, &c. *nobiſcum tractaturi de magnis & arduis negotiis noſtris, & communi Regni Utilitate—veſtrum habere conſilium & aliorum Magnatum Terræ ndſtræ—Abbates & Priores conventuales toti Diœceſis citari faciatis.*

(*e*) *Clauſ.* 6 *Joh. m.* 3. *dorſo.*
The Summons in King *John*'s time.

The ſecond Record is (*f*) 26 *H.* 3. directed to *Walter* Archbiſhop of *York*; differing from the former in theſe particulars: *Sicut nos & honorem noſtrum*; here is added, *Pariter & veſtrum diligitis, in fide qua nobis tenemini.*

(*f*) *Clauſ.* 26 *H.* 3. *m.* 13. *dorſo.*

Anno 38 *H.* 3. the Writ is directed to the Archbiſhop of *Canterbury*— *Paternitatem veſtram omni qua poſſumus affecti-*

one

affectione rogamus, quatenus nos, & Jura noſtra totaliter indefenſa non deſerentes, cum omni celeritate convocetis coram vobis Capitulum veſtrum Cathedrale, Archidiaconos, Viros Religioſos, & Clerum vobis ſubjectum, inducentes eos omnibus modis quibus poteritis quod nobis in tanta neceſſitate liberaliter ſubveniant.

I do not bring in this as a Writ of Summons to a Parliament, but only as a ſpecial Writ to excite the Clergy, to a free, voluntary and liberal Contribution for defence of *Gaſcoign*, and ſo to ſhow the Cuſtoms of Benevolences in that Age, out of Parliament.

These Summons for Military Aid.

The next (*g*) Writ of Summons of the Prelates to a Parliament, was that of 49 *H.* 3. directed to the Biſhop of *Dureſm*, wherein the occaſions of ſummoning are reckoned to be after the great Troubles, being quieted by giving the Prince Hoſtage, for eſtabliſhing the Peace; therefore to provide with wholeſome Deliberation, and to eſtabliſh, and totally to compleat with full Security a Peace, *&c. Et ſuper quibuſdam aliis Regni noſtri negotiis quæ ſine conſilio veſtro & aliorum Prælatorum & Magnatum noſtrorum, nolumus expediri, cum eiſdem tractatum habere nos oporteat, vobis mandamus, Rogantes in Fide & Dilectione quibus nobis tenemini*, &c. 14 *Nov.*

(*g*) *Clauſ.* 49 *H.* 3. *dorſo* 11. *in ſchedula.* The firſt Summons to the Lords, when the Commons alſo were ſummoned.

The next (*h*) Writ is that of 23 *E.* 1. to the Archbiſhop of *Canterbury*, thus, *Quia ſuper quibuſdam arduis negotiis, nos & Regnum noſtrum, ac vos, cæteroſq; Prælatos de eodem Regno tangentibus, quæ ſine veſtra aceorum præſentia nolumus expediri, Parliamentum noſtrum tenere ac vobiſcum ſuper hiis colloquium habere volumus & tractatum*, 24 July.

(*h*) 23 *E.* 1. *m.* 9. *dorſo.*

The ſame Year 23 *E.* 1. there was another (*i*) Parliament ſummoned by this memorable Writ, directed to the Archbiſhop of *Canterbury: Sicut Lex juſtiſſima provida circumſpectione ſacrorum Principum ſtabilita hortatur, ut quod omnes tangit, ab omnibus approbetur, ſic & innuit evidenter, ut communibus periculis per remedia proviſa communiter obvietur*: Then reciting the King of *France* his frauds concerning *Gaſcoign* and his Hoſtile preparations, adds, *proviſa jaculaminus lædunt*; ſo commands him *in fide & dilectione*, to be perſonally preſent, *&c. Præmunientes Priorem & Capitulum veſtræ Eccleſiæ, Archidiaconos, totumque Clerum veſtræ Diœceſis, facientes quod iidem Prior & Archidiaconus in propriis perſonis & dictum Capitulum per unum, idemque Clerus per duos Procuratores idoneos plenam & ſufficientem poteſtatem ab ipſis Capitulo & Clero habentes, una vobiſcum interſint modis omnibus tunc ibidem ad tractandum, ordinandum, & faciendum nobiſcum, & cum cæteris Prælatis & Proceribus & aliis Incolis Regni noſtri*, &c. 30 Sept.

(*i*) *Cl.* 24 *E.* 1. *m.* 4. *dorſo.*

The Variations of the Writs are moſtly theſe, That the cauſe of the Summons is diverſly expreſſed, according to the preſent emergence. Sometimes the word is *Mandamus rogantes*, otherwhile as 27 *E.* 1. *m.* 16. *Effectuoſe requirimus, & rogamus, Rogamus ſpecialius, Nihilominus injungendo mandamus*, as the ſame years *m.* 9 *dorſo. Injungentes* the ſame year: *firmiter in-*

The commanding part of the Summons to appear.

jungendo, 30 E. 1. *m.* 9. *dorſo*: *Iterato mandamus*, *Cl.* 33 E. 1. *m.* 8. *dorſo*, *Firmiter injungendo mandamus*, *Clauſ.* 11 E. 3. *part* 2. *m.* 10. *dorſo*, *Rogantes mandamus*, *Cl.* 38 H. 6. *m.* 29. *dorſo*, *Rogando mandamus*, *Cl.* 22, 23 *E.* 4. *m.* 11. *dorſo.* and ſo 15 *Caroli* 1. *fol.* 20.

Theſe are the greateſt variations in the Mandatory part, which was moſtly to be perſonally preſent themſelves, the Biſhops, Abbats, Priors, Deans, and Archdeacons, and one Proctor for the Chapter, and two for the Clergy of the Dioceſs. Sometimes the word is, *Sitis apud nos omnibus prætermiſſis*, as 27 *E.* 1. *m.* 16. *dorſo*, or, *Perſonaliter interſitis*, the ſame Year, *m.* 9. *dorſo*, and 30 E. 1. *m.* 7, 9. *dorſo*, and ſeveral other, or, *Sitis in propria perſona veſtra, vel per ſufficientem procuratorem a vobis plenam poteſtatem habentem*, as *Cl.* 6 E. 2. *m.* 2. *dorſo*, or, *quatenus omni excuſatione voluntaria ceſſante*, as 4 E. 3. *m.* 13. *dorſo*, or, *propter arduitatem & magnitudinem negotiorum abſentiam veſtram nequimus nec volumus aliqualiter excuſare*: other times, eſpecially *Sede vacante*, to ſend a Proctor, or Proxy, thus, *Sufficientem Procuratorem plenam a vobis poteſtatem habentem, mittatis*, as 27 E. 1. *m.* 9. *dorſo*. But (*k*) other times thus, *Scientes pro certo, quod niſi evidens & manifeſta neceſſitas id expoſcat, non intendemus Procuratores ſeu excuſatores pro vobis admittere*; and gives the reaſon why, as they loved the King, and his Honour, and the tranquillity and the quiet of the Kingdom, they would be preſent, becauſe of the (*l*) arduity, or difficultneſs of the buſineſs.

(*k*) *Clauſ.* 6 *E.* 3. *m.* 36. *dorſo.*

(*l*) *Propter arduitatem negotiorum prædictorum.*

Another reaſon is given, *Clauſ.* 11 *E.* 3. *part* 1. *m.* 15. leſt by their abſence the expedition of the Kings Affairs ſhould be retarded or deferred; and in another, becauſe of the abſence of them, oftentimes (*m*) the great Affairs have been retarded, to the diſprofit of the King and his Kingdom.

(*m*) *Fuerunt non abſque noſtri, & Regni noſtri incommodo, ſæpius retardata.*

In the 12*th* of *E.* 3. it is very ſtrict thus, (*n*) *Attentis præmiſſorum arduitate, & imminentibus periculis, quacunque excuſatione ceſſante, perſonaliter interſitis.* And 14 *E.* 3. after the King had taken upon him the Title of *King of* France, the charge for their appearance was very ſtrict ——*Nos ſicut honorem noſtrum, & ſalvationem ejuſdem Regni noſtri* Angliæ, *cæterarumque terrarum, ac jurium noſtrorum prædictorum, ac negotiorum expeditionem diligitis, nullatenus omittatis*; and ſo in many others.

(*n*) *Clauſ.* 12 *E.* 3. *part* 2. *m.* 32. *dorſo.* & 13 *E.* 3. *part* 2. *m.* 1. *dorſo.*

There is a prevalent Argument uſed in the (*o*) 16 *E.* 3. when he ſummoned a Parliament in his abſence, to induce the Prelates, and other Members to appear perſonally, That the King lets them know, that he will more weigh the Gratitude or Ingratitude, which they ſhew him in his abſence, than if he were preſent, and he will take care to reward them according to their merit.

(*o*) *Clauſ.* 16 *E.* 3. *part* 1. *m.* 39. *dorſo. Scituri quod gratitudinem, & ingratitudinem, quas nobis in abſentia noſtra jam oſtendi contigerit, plus ponderabimus quam ſi fuerant, dum præſentes eſſemus, & ea curabimus juxta merita, ſeu demerita compenſare.*

Another, the *Cl.* 2 *R.* 2. *m.* 3. *dorſo*, That the King would in no wiſe have them excuſed, unleſs they were detained with ſuch an Infirmity as they could not labour. The words are, *niſi tanta infirmitate tunc detenti fueritis, quod aliqualiter illuc laborare non poteritis, nullo modo excuſatos habere volumus.*

The

The ends of theſe Summons were ſometimes general, and ſometimes ſpecial. The general Cauſes were expreſſed by the common (*p*) Profit of the Kingdom, the *Ardua negotia nos & ſtatum Regni tangentia.* Other times, as 25 *E.* 1. *M.* 6. *dorſo*, *Arduis & urgentibus negotiis nos, & vos, & totum Regnum noſtrum tangentibus.* Other times, (*q*) *ad ſalvationem Coronæ noſtræ Regiæ, & communem utilitatem populi Regni noſtri.*

(*p*) *Communi Regni utilitate. Cl.* 6 *Fo. m.* 33. *dorſo.*

The Cauſes of Summoning.

(*q*) *Cl.* 27 *E.* 1. *m.* 9. *dorſo.*

The Preamble to the Writ of Summons 4 *E.* 3. is very (*r*) remarkable. *Rex*, &c. *Qualiter negotia, nos & ſtatum Regni noſtri contingentia, poſtquam ſuſcepimus gubernacula Regni noſtri hucuſque in noſtri dampnum, & dedecus, ac depauperationem populi noſtri deducta erant, veſtram credimus prudentiam non latere: propter quod, non volentes hoc, urgente conſcientia, ulterius ſuſtinere, ac deſiderantes toto corde, ſtatum & Regimen Regni noſtri, ſecundum juris ac rationis exigentiam, ad honorem Dei & tranquillitatem, & pacem Sanctæ Eccleſiæ, ac totius populi ejuſdem Regni reformari; Ordinavimus*, &c. *Parliamentum*, &c.

(*r*) *Cl.* 4 *E.* 3. *m.* 13. *dorſo.*

General Cauſes of Summons.

The 22 of *E.* 3. hath a peculiar (*s*) Clauſe, *Quod dictum Parliamentum non ad Auxilia ſeu Tallagia a populo dicti Regni noſtri petenda, vel alia onera eidem populo imponenda, ſed duntaxat pro juſtitia ipſi populo noſtro, ſuper dampnis & gravaminibus ſibi illatis facienda.*

(*s*) *Cl.* 22 *E.* 3. *part* 2. *m.* 9. *dorſo.*

Another conſiderable (*t*) Clauſe is to be found 31 *E.* 3. *Et quum prædicta negotia perquam ardua ſine maxima deliberatione tam Prælatorum & Cleri, quam Magnatum, & Communitatis ejuſdem Regni, nullo modo expediri poterunt; ad quorum expeditionem Auxilium & Conſilium tam a vobis*, &c. *habere neceſſario oportet.*

(*t*) *Cl.* 31 *E.* 3. *m.* 21. *dorſo.*

The (*u*) Preamble 3 *H.* 6. is to enquire how Juſtice hath been done, *&c. Quia nos jam dum in Annis degimus teneris, an pax & juſtitia ubilibet inter Ligeos noſtros Regni noſtri* Angliæ *(ſine quarum obſervatione Regnum aliquod proſpicere non poteſt) debite conſerventur, & exhibeantur necne*, &c. Therefore he ſummons a Parliament.

(*u*) *Cl.* 3 *H.* 6. *m.* 9. *dorſo.*

The cauſe (*w*) of the Summons 22 *E.* 4. is thus expreſſed, *Quibuſdam arduis & urgentibus negotiis, nos, ſecuritatem, & defenſionem Eccleſiæ Anglicanæ ac pacem, tranquillitatem, bonum publicum, & defenſionem Regni noſtri, & Subditorum noſtrorum ejuſdem concernentibus.* Therefore he ſummons them.

(*w*) *Cl.* 22 & 23 *E.* 4. *m.* 11. *dorſo.*

The ſpecial cauſes are moſtwhat to have ſupply againſt the Kings Enemies, the *French* or *Scotch* Kings: and it is to be noted, that in the Summons of King *E.* 2. moſtly the (*x*) *Scots* are not only called the Kings Enemies but his Rebels, which implies them Subjects by vertue of the Homage done to his Father, and ſo 8 *E.* 2. *M.* 24. *dorſo*, it is called, *Terra noſtra Scotiæ*, though he was the moſt unfortunate of all our Kings in his Expeditions againſt that Kingdom.

Special Cauſes of Summons.

(*x*) *Scotis Inimicis, & Rebellibus noſtris, Clauſ.* 2 *E.* 2. *m.* 20. *dorſo.*

The firſt (*y*) Writ I have found, wherein it is ſaid, the King called his Parliament with the Advice of his Council, was 14 *E.* 3. *quia de aviſamento Concilii noſtri ordinavimus*, and ſo

(*y*) *Cl.* 14 *E.* 3. *part* 2. *m.* 28. *dorſo.*

With the Advice of the King's Council.

in 46 *E.* 3. and afterwards ſometimes uſed, and often omitted, but in later times generally uſed.

The laſt conſiderable thing in their Writs, is what the Prelates, *&c.* ſummoned, were to do at theſe Parliaments, which moſt-what is comprehended in theſe Words, That it is (z) expedient to have their Counſel, or *nobiſcum ſuper dictis negotiis tractaturi, veſtrumque conſilium impenſuri*, 23 *E.* 1. *m.* 9. *dorſo*; or, *ad tractandum, ordinandum, & faciendum nobiſcum*, *Cl.* 24 *E.* 1. *m.* 4. *dorſo*; *Ad ordinandum de quantitate & modo ſubſidii*, *Ibid. m.* 7. *dorſo*; *habere colloquium & tractatum*, *Clauſ.* 2 *E.* 2. *m.* 20. *dorſo*, *& ad tractandum & conſentiendum*, *Cl.* 6 *E.* 2. *m.* 2. *dorſo*. So in (*a*) another, *Ordinabimus quod juxta conſilium veſtrum, & aliorum Prælatorum, Magnatum, cæterorumque ibidem convocatorum viderimus opportunum*. In the (*b*) 20 of *E.* 3. it is thus expreſſed, *Ad conſentiendum hiis quæ tunc prædictos Prælatos, Comites & alios Proceres ordinari contigerit ſuper negotiis antedictis*, and the like. 46 *E.* 3. *m.* 11. *dorſo*. In the Writ, 38 *H.* 6. *m.* 29. *dorſo*, it is, *Ad tractandum, conſentiendum & præcludendum ſuper præmiſſis & aliis*, and 23 *E* 4. *Et concludendum*; and ſo in the 15*th.* of K. *Ch.* the Firſt, *Ad tractandum, conſentiendum, & concludendum.*

(z) *Veſtrum expedit habere conſilium. Cl.* 6 *Fo. m.* 3. *dorſo.*

What the Summoned were to do.

(*a*) *Cl.* 14 *E.* 3. *par.* 1. *m.* 33. *dorſo.*

(*b*) *Cl.* 20 *E.* 3. *par.* 2. *m.* 22. *dorſo.*

SECT. 3.

Of the Summons of the Temporal Lords.

Summons to the Lords Temporal like thoſe to the Prelates, excepting in ſome few Particulars.

I Have been the longer upon theſe Writs of Summons to the Clergy, becauſe thoſe to the Nobles differ'd not much, and the material differences will be all I need note in their Writs, and in theſe we may find the gradual alteration; from giving Counſel and Advice only, it came to Treaty, Ordaining, Conſenting, Doing, and Concluding. I ſhall refer the curious Reader for the remarks that may be made from all theſe Writs, to Mr. *Prynn*'s (*c*) Collection of them, and only note ſome few, moſt to my purpoſe, of the Earls, Barons, and the greater Tenents *in Capite's* Writs, and then proceed to the Writs of the Knights, Citizens and Burgeſſes.

(*c*) *Part* 1. Brief Regiſter, *p.* 102, *&c.*

The firſt Writ of Summons to a Parliament, now left upon Record, as (*d*) Mr. *Prynn* notes, is that of 49. *H.* 3. thoſe of the (*e*) 45*th.* being only Summons to aſſiſt the King, *cum Equis & Armis*, *& cum Poſſe veſtro* (as that to *W. de Bello Campo de Aumel*, and others ſhew) being only to afford him aid againſt his Enemies and Rebels.

(*d*) *Ibid. p.* 160.

(*e*) *Cl.* 45 *H.* 3. *m.* 3. *dorſo.*

In moſt of the Writs to the Princes, Dukes, Earls, Barons, and Peers, we find the *Mandamus* is, *Vobis in fide & homagio quibus nobis tenemini*. But ſometimes, as to *Edmund* Earl of (*f*) *Cornwal*, it is, *Mandamus in homagio, fide & dilectione*, and that to *Thomas de* (*g*) *Furnival* 36 *E.* 3. is *fide & ligeancia quibus nobis tenemini*. That to *Edward*, Prince of *Wales*, 49 *E.* 3. 6 *m. dorſo* is directed *Cariſſimo primogenito ſuo Ed. Principi*

In Fide & Homagio vel Ligeancia, proper to Temporal Lords.

(*f*) *Cl.* 25 *E.* 1. *m.* 25. *dorſo.*

(*g*) *Cl.* 36 *E.* 3. *m.* 42. *dorſo.*

pi Walliæ, and the *Mandamus* neither hath adjoined to it, *fide, homagio*, or any other Word, but only commands him to be prèsent, *in propria perſona*, though others have *fide & homagio* or *ligeancea*. See *Prynne*'s Brief Regiſter, *part* 1. *p.* 207.

It is to be noted, that the clauſe in *Homagio & Ligeancia quibus nobis tenemini*, is peculiar to the Temporal Lords. But that in *fide & dilectione* is not ſo peculiar to the Eccleſiaſtical Lords, but is inſerted into the Lay Lords Writs ſometimes. The reaſon why Archbiſhops, Biſhops, Deans, Parſons, Prebends, and other Eccleſiaſtic Bodies Politic, when they do Homage (ſaith (*h*) *Littleton*) do not ſay *Jeo deveign voſtre Home*, I become your Man (from whence *Homagium* or *Hominium* comes) is (*i*) becauſe he is ſolely the Homager of God, and ſo *Glanvil, Lib.* 9. *c.* 1, 2. *Bracton, fol.* 78. *F. Britton, c.* 68. *leſta, L.* 3. *c.* 16. reſolve that no Man, (*k*) elected Biſhop, after Conſecration doth Homage, whatever he hath done before, but only Fealty, and no Convent, or Abbat, or Prior ought to do Homage, becauſe they hold in anothers name, *viz.* the name of the Churches. But that theſe Eccleſiaſtics ſwore Fealty, appears by many examples produced by Mr. *Prynn*, (*l*) and what Oaths they took, in his abridgment of the Records of the Tower. But this is now of little uſe, and ſo I leave it and ſhall obſerve ſome Particulars which Mr. *Prynn* and others have noted from the ſeveral Writs of Summons to Temporal Lords.

(*h*) *Littleton, Cap. de Homagio, ſect.* 86.

(*i*) *Par eſtre tant ſolement le home de Dieu.*

(*k*) *Poſt conſecrationem homagium non faciunt, quicquid fecerunt ante, ſed tantum fidelitatem.*

(*l*) Brief Regiſter, *part* 1. *fol.* 196. to 206. *p.* 427, 657, 663.

First it may be obſerved, that a Summons by Writ, though for two or three Generations, from Father to Son, did not ennoble the Blood to make them Barons. So *Ralph de Camois* 49 *H.* 3. was ſummoned by Writ, and ranked in the Roll above all Barons, and *Ralph* his Son, *Anno* 7 *E.* 2. But (*m*) *Thomas* the Grandchild, being choſen one of the Knights for *Surry*, was diſcharged by the King's Writ, becauſe he and many of his Anceſtors were Bannerets, and King *Richard* the Second ſummoned him to that very Parliament, and he was ſummoned ever after during Life; yet his Poſterity, as others, were omitted, which if they had been Barons properly, (as thoſe by Creation and Tenure of Lands) had not been omitted, but might have challenged Summons *ex debito Juſticiæ*. But I cannot enter into this long Controverſy, the curious may peruſe Mr. *Prynn*, and *Elſyng*'s ancient method of holding Parliaments, Page 33. who is of opinion that every degree of Baron paſſed with actual Ceremony, and thoſe Patents ſome had (whereof the firſt upon Record he ſaith, was 11 *R.* 2. to the Lord *John Beauchamp* of *Rolt*) was an entailing of the Honour, rather than the Creation, becauſe the words are, *ipſum Johannem in unum Parium & Baronum Regni præficimus*; whereas if he had been then created, the words ſhould have been, *per præſentes præfecimus*. Beſides, we find *Henry Bromflet* Knight, was created by ſpecial Writ, and his Heirs Males, Barons *de Veſcy*, 27 *H.* 6. (*n*) entred after the name

1. Obſervations upon the Writs to Temporal Lords. That it alone did not ennoble.

(*m*) *Clauſ.* 7 *R.* 2. *m.* 32. *dorſo.*

Firſt and ſecond Brief Regiſter.

(*n*) *Clauſ.* 27 *H.* 6. *m.* 26. *dorſo.*

names of the Temporal Lords, in the very Summons in common Form, to which is added, *Volumus enim vos & hæredes veſtros maſculos de Corpore veſtro legitime exeuntes Barones de Veſcy.* Now this ſpecial Writ and Clauſe of Creation had been meerly void and nugatory, had the general Writ alone ennobled him and his Poſterity. Yet in all the (*o*) ſubſequent Summons, 28, 29, 31, 33, 38 *H.* 6. He is only called *Dominus*, not *Baro de Veſcy*, as alſo may be noted of *Beauchamp*.

(*o*) *Prynne, part* 1. Brief Regiſter, *p.* 228.

2. The uſe of *Baro* in Writs, how rare.

Secondly, It may be obſerved, that the word *Baro* and *Barones* are frequently met withal in Hiſtories, the Clauſe-Rolls of King *John*, and *H.* 3. and in the Preface of *Magna Charta*, and ſeveral Statutes applied to all the (*p*) Temporal Lords of Parliament; yet in all the Clauſe-Rolls, and Writs of Summons, Mr. *Prynn* hath not obſerved any particular Perſons amongſt them, ſummoned by the Title of Barons, but only the Barons of *Grayſtock*, and *Stafford*, from *Ed.* 1. to *H.* 6. as *Johanni, Willielmo, Radulpho Baroni de Grayſtock*, and ſo in *Ed.* 1. and 3. *Edmundo & Radulpho Baroni de Stafford.*

(*p*) *Ibid. p.* 218.

3. Title of *Dominus* in Writs of Summons.

Thirdly, as to the Title of *Dominus*, Mr. *Prynn* ſaith, It is not to be found given to any but two before the time of *H.* 6. The firſt is *John de* (*q*) *Moubray*, ſtiled *Dominus Inſulæ de Axholm*, none elſe having this title till after the Reign of *Richard* the Second. The next ſo ſtiled, is 11 *H.* 4. (*r*) where a Writ iſſued, *Johanni Talbot Domino de Furnival*, which though omitted in ſome Summons after, was again uſed in the Summons to him, (*s*) 4 *H.* 5. and *H.* 5. after which, none is found ſtiled *Dominus* till (*t*) 22 *H.* 6. that *Robert Hungerford Chevalier*, is ſtiled *Dom. de Mollins*, as he is in 25 *H.* 6. which gave the Title of *Dom. de Poynings* to *Henry Percy*, and in *Cl.* 27 *H.* 6. *m.* 21. *dorſo*, this Title *Dominus* is given to *Hungerford Percy*, and four more, after which it grew more common to them, and others ſummoned, as may be ſeen in Sir *William Dugdale*'s Summons lately Printed, who (*u*) 49 *H.* 3. reckons *Dom. Hugo*, *Dom. Humet*, and *Dom. Stanford.*

(*q*) *Cl.* 16 *E.* 3. *par.* 2. *m.* 13. *dorſo.*

(*r*) *Cl.* 11 *H.* 4. *m.* 32. *dorſo.*

(*s*) *Cl.* 4 *H.* 5. *m.* 16. *dorſo.*

(*t*) *Cl.* 22 *H.* 6. *m.* 21. *dorſo.*

(*u*) *Cl.* 49 *H.* 3. *m.* 5.

4. Title of *Chevalier.*

Fourthly, Another Title given to Barons of the upper Houſe is that of *Chevalier*, which was not given to any Temporal Lords or Barons, in any Writs, or Liſts of Summons to Parliament, before 49 *Ed.* 3. (*w*) wherein Summons iſſued, *Willielmo de Morle Chevalier*, *Willielmo de Aldburgh Chevalier*, *Joh. de Welle Chevalier*, *Hugoni de Dacre Chevalier*. After which it grew more common under King *Richard* the Second, *Henry* the Fourth and Fifth.

(*w*) *Cl.* 49 *E.* 3. *n.* 4. 6. *dorſo.* 50 *E.* 3. *part* 2. *m.* 6. *dorſo.*

After the beginning of *H.* 6. and during the Reign of *H.* 6. and *Ed.* 4. there was ſcarce any Temporal Lord in the liſts of Summons, but was ſtiled *Chevalier* or *Miles*, and ſo it continues to this day, though not as Mr. *Prynn* ſaith, becauſe they were all generally Knighted for their greater Honour; for it is apparent in the Liſts exhibited by Sir *William Dugdale*, that moſt of the Barons by deſcent, though never Knighted, had the Title.

Fifthly,

Fifthly, There is great difference betwixt Writs of Summons to general Parliaments, and particular Councils upon emergent occaſions, which are not properly Parliaments. All Biſhops, Abbats, Priors, Earls, Lords, Barons, together with Judges, and King's Council, Citizens, Burgeſſes of Parliament, and Barons of the Cinque-Ports being uſually ſummoned to the one; but to the other, ſome few Spiritual and Temporal Lords only, without (*x*) any Judges, Aſſiſtants, Knights, Citizens, Burgeſſes, or Barons of the Cinque-Ports, or ſome few of them only, and divers who were no uſual Lords, or Barons of Parliament, as Mr. *Prynn* hath made evident, and the Rolls themſelves in the Margin notes them by *de Concilio ſummonito*, or *deveniendo ad Concilium:* which ſome Antiquaries having not noted, have confounded them.

5. Of Councils that were not Parliaments.

(*x*) Brief Regiſter, *part* 1. *pag.* 187. *to* 192.

SECT. 4.

Of the Judicature of the Houſe of Lords.

IT is evident that the Lords in Parliament have ever been the uſual Judges, not only in all criminal and civil cauſes, proper for Parliaments to judg or puniſh, and Writs of Errors, but likewiſe in all caſes of Precedencies, and Controverſies concerning Peers and Peerage, which Power was in them as the King's Supreme Court, before there were any Knights, Citizens, or Burgeſſes ſummoned to our Parliaments. So *Hoveden* (*y*) is expreſs in the caſe of *Sanctius*, King of *Navar*, and *Alphonſus*, King of *Caſtile*: *Comites & Barones Regalis Curiæ Angliæ adjudicaverunt*, *Anno* 1177. 23 *H.* 2. So *Fleta* in *Ed.* the Firſt's time, writes (*z*) thus; The King hath his Court in his Council, in his Parliaments, there being preſent the Prelates, Earls, Barons, Nobles, and other skillful Men (*viz.* the Judges Aſſiſtants) where are ended the doubts of Judgments.

6. The Lords Judicature.

(*y*) *Annal. pars poſter.* p. 561. *ad* 566.

(*z*) *Habet enim Rex Curiam ſuam in Concilio ſuo in Parliamentis ſuis, præſentibus Prælatis, Comitibus, Baronibus, Proceribus, & aliis viris peritis, ubi terminatæ ſunt dubitationes judiciorum.* Lib. 2. c. 2. p. 66.

This Particular of the Juriſdiction of the Houſe of Lords, is ſo fully in every Branch of it proved by Mr. *Prynn* in his Plea for the Lords Houſe, that it were an Injury to the inquiſitive Reader, not to referr him to that Treatiſe for full Satisfaction; therefore I ſhall only pick out a very few out of a Manuſcript I have of the Priviledges belonging to the Baronage of *England*, and Mr. *Prynn*.

In the fourth of King (*a*) *Edward* the Third, the Peers, Earls and Barons aſſembled at *Weſtminſter*, ſaith the Record, have ſtrictly examined, and thereupon aſſented and agreed, that *John Mautravers* is guilty of the death of *Eſmon* Earl of *Kent*, Uncle of our Lord the King that now is: wherefore the ſaid Peers of the Land, and Judges of Parliament, judged and awarded, that he the ſaid *John* ſhould be drawn, hanged, and beheaded.

(*a*) *Rot. Parl.* 4 *E.* 3. *m.* 7. *num* 3. Judgment of Lords on *John Mautravers.*

In the firſt of *R.* 2. *John* Lord of (*b*) *Gomenys*, and *William de Weſton*, were brought before the Lords, ſitting in the white Chamber,

(*b*) *Rot. Parl.* 1 *R.* 2. *m.* 6. *num.* 38, 39.

On *John* Lord of *Gomenys*, and *William Weſton*, for delivering up Forts to the Enemy.

Chamber, and were ſeverally charged at the Commandment of the Lords, by Sir *Richard Scroop* Knight, Steward of the Kings Houſe: *William Weſton* being accuſed for rendring the Caſtle of *Outhrewike*, and *John* Lord of *Gomenys* for rendring the Caſtle of *Ards*. They both made plauſible defences, and Sir *Rich. Scroop* Steward, tells *William*, that the Lords ſitting in full Parliament do adjudge him to death. But becauſe our Lord the King is not yet informed of the manner of this Judgment, the execution thereof ſhall be reſpited till the King be informed thereof; and the like Sentence he paſſed upon *John* Lord of *Gomenies*, only adding, that he being a Gentleman, and Banneret ſhould be beheaded.

There are many more Examples of Judgments given in Capital matters upon *Bergo de Bayons*, 4 *E.* 3. *m.* 7. *num.* 4. *Thomas de Gurny eadem membrana num.* 5. and others; and for Offences not Capital, of *Richard Lions*, 50 *E.* 3. *m.* 7. *William le Latymer*, 42 *E.*3. *m.* 2. *William Ellis*, *ibid. num.* 31; *John Chicheſter* and *Boteſha*, 1 *R.* 2. *num.* 32. *Alice Piers*, *Ibid. num.* 41.

Antiquity of Judgment by Peers.

(c) Plea for Lords, *p.* 203. *Hiſt. lib.* 4.

Mr. *Prynn* (c) ſhews this Juriſdiction out of Hiſtorians, even from *Caſſibellan*, out of *Geoffrey* of *Monmouth*. Alſo, *Anno* 924. of *Elfred* a Nobleman, who oppoſed King *Æthelſtan*'s Title, and had his Lands adjudged by the Peers forfeit to him; the Words of the King are, *Et eas accepi* (d) *quemadmodum judicaverunt omnes Optimates Regni* Anglorum.

(d) *Malmsb. de Geſtis Reg. lib.*2. *c.* 6. *p.*62. *Spelman. Conc. Tom.*1. *p.* 407, 408. *Anno* 1043.

So Earl *Godwin* having murdred Prince *Alfred*, Brother to King *Edward the Confeſſor*, being fled into *Denmark*, and hearing of King *Edward's* Piety and Mercy, returned, and came to *London* to the King, who then held a Great Council, and denied the Fact, and put himſelf upon the (e) conſideration of the Kings Court, and the King ſpeaks to the Earls and Barons thus, *Volo quod inter nos in illa appellatione rectum judicium decernatis, & debitam juſticiam faciatis*, and after it is ſaid, *Quicquid judicaverint per omnia ratificavit.*

(e) *Unde ſuper hoc, pono me in conſideratione Curiæ veſtræ.* Chron. Brompton. col. 937, 938.

(f) *An.* 1164. *M. Paris* 94. *Sicut Barones cæteri debent intereſſe judiciis Curiæ Regis cum Baronibus quouſque perveniatur in judicio ad diminutionem membrorum, vel ad mortem.*

The Houſe of Lords the King's Court of Barons.

So in the Conſtitutions of (f) *Clarendon*, it is appointed, That the Archbiſhop, Biſhops, and thoſe Clergy that held *in Capite*, as by Barony, ſhould be Parties in the Judgments of the Kings Court as other Barons ought, with the other Barons, till it come in Judgment to the loſs of Member, or to Death.

(g) *Dixit Baronibus ſuis, Cito facite mihi judicium de illo, qui homo meus Ligeus eſt, & ſtare Juri in Curia mea recuſat.*

So in the Caſe of *Tho. Becket* Archbiſhop of *Canterbury*, *Anno* 1165. 11 *H.* 2. we find in *Hoveden*, *parte poſt*, *p.* 494, 495. that, *Barones Curiæ Regis judicaverunt eum eſſe in miſericordia Regis*: and afterwards, when he would not yield to the Kings Will, he (g) ſaith to his Barons, Quickly make to me Judgment of him who is my Liege Man, and refuſeth to ſtand to the Law in my Court: The Barons going out judg'd him fit to be ſeiz'd on, and ſent to Priſon, and the Hiſtorian ſaith, *tunc miſit Rex Reginaldum Comitem Cornubiæ & Robertum Comitem Leiceſtriæ ad indicandum ei judicium de illo factum.*

(b) *Anno* 10 *Johan. Mat. Paris*, *p.* 218.

Anno 1208. King (h) *John* exacted Pledges of his Subjects; and amongſt others of *William de Breauſe*, who ſaid, If he had offended

offended the King, he would be ready to answer his Lord, and that without Hostages, *secundum judicium Curiæ suæ & Baronum Pariũ suorum.*

So *Anno* 1240. 24 *H.* 3. (*i*) *Matthew Paris* saith, That *Hubert de Burgo*, Earl of *Kent*, was grievously accused before the King and his whole Court, and it was adjudged he should resign to the King four of his Castles.

(*i*) *Graviter accusatus coram Rege, & Curia tota.* Lond. Mat. Westm. 153.

I cannot omit one memorable passage, that, (*k*) *Anno* 1260. 44 *H.* 3. there falling out a difference betwixt King *Hen.* 3. Prince *Edward* his Son, *Simon Montfort*, and other Nobles, the King called his Baronage to St. *Pauls*, and there it being urged, that Prince *Edward* had done some injuries to the King, he offered to prove himself innocent before the King and his Uncle, who was King of the *Romans*; saying, That none of (*l*) the rest of the Barons and Earls were by right his Peers, nor ought to exercise upon him their Discussions of the matter. By which it appears, that he judged himself to be something more than a Peer of the Realm, being the Heir apparent of the Crown.

(*k*) *Mat. Westm. Anno* 1260. *p.* 295, 296.

Who are Peers of Prince *Edward.*

(*l*) *Omnes alios Barones & Comites, sibi de jure non esse Pares, nec suas in eum excercere discussiones.*

I might fill a large Volum with the Histories and Records, to prove this; but since Levellers, and the House of Commons that voted the House of Lords dangerous and useless, have received such deadly wounds by Mr. *Prynne* in his Plea for the Lords, who was once one of their own Champions, I think it needless to whet those Weapons again, since they always will be in readiness for any one to make use of if need require; and shall only obviate one objection that may be urged, That whatever the usage was before the Representatives of the Commons, yet the Commons after were often admitted to a share of Judicature in some cases: But I shall give a few Instances, how, after this change of the Constitution of Parliament, still this power of Judicature remained in the King and House of Lords.

An Objection, That after the House of Commons were admitted, the Jurisdiction of the Lords House was lessened; Answered.

Roger de (*m*) *Mortimer* being accused of High Treason, 4 *E.* 3. for the Murther of King *Edward* 2. after his resignation and unlawful deposition; *Knighton* (*n*) giving an account of the proceedings agreeable to the Parliament Roll, saith, *Rex præcepit Comitibus, Baronibus, & cæteris Magnatibus Regni justum judicium ferre super prædicto Rogero de Mortimer*: So at the Parliament held at *Salisbury*, 7 *R.* 2. *W. de Zouch* is said to be called to the Parliament, to stand to the Judgment (*o*) of the King, and the Lords: So *Michael de la Pole*, Earl of *Suffolk*, and Chancellor of *England*, 10 *R.* 2. (*p*) was accused by the Commons in full Parliament, before the King, Bishops and Lords; and at last it is said, The Lords in full Parliament gave judgment against him.

(*m*) 4 *E.* 3. *num.* 11. 28 *E.* 3. *num.* 9, 10.

(*n*) *De Event. Angliæ, lib.* 3. *c.* 16. *col.* 1556, 1557.

(*o*) *Ad standum judicio Regis, & Dominorum.* Walsingham, p. 334. Hist. Ang. & Hypodig. Neust. p. 141.

(*p*) *Rot. Parl.* 10 *R.* 2. *num.* 6. *ad* 18.

In the Parliament 11 *R.* 2. *Thomas* Duke of *Glouceſter* offered to put himself upon his Tryal as the Lords of the Parliament would award, *&c.* After which the Lords, as well Spiritual as Temporal, claimed their Liberties and Franchises, namely, That

all weighty matters in the ſame Parliament which ſhould be after moved touching the Peers of the Land, ſhould be judged and determined by them by the courſe of Parliament, and not by the Civil Law, nor yet by the Common Law of the Land, uſed in other Courts of the Realm.

Yet this ſeems a very high Demand; for they have not *Juris dandi* but *dati Juriſdictionem*, as they are a Court of Miniſterial Juriſdiction, being the Court of the King's Barons in Parliament. And though, when upon Writ of Error (*q*) any Judgment in the King's Bench is examined in the Houſe of Lords, and there affirmed or reverſed, the Judgment is ſaid to be affirmed or reverſed in Parliament; yet we cannot conclude, they have the Power of the High Court of Parliament, that their Decrees (if againſt the Law) ſhould be as binding as Acts of Parliament. And though the ſame Houſe, in the ſame Seſſion, may not have Power to review again their own Judgment, nor to reſtore again any Judgment they have reverſed, becauſe they judge miniſterially, and not ſovereignly, and ſo bind their own Hands, as well as their Inferiors; whereas an Abſolute Supreme Court is never at the laſt Period of Juriſdiction: yet we ſee Attainders in one Parliament reverſed in another; and ſo may their Judgments be. But this *obiter*.

(q) *Egerton, ſect.* 4. 22, 23.

How the Lords judge miniſterially.

I ſhall but add one proof more, being full and expreſs to the purpoſe, to prove the Houſe of Lords ſole Juriſdiction with the King, (who muſt always be underſtood to give Judgment by them:) The Record is 1 *H.* 4. (*r*) where it is ſaid, That 3. *Nov.* the Commons in this Parliament ſhewed to the King, *Come les joggements du Parlement apperteignent ſoulement au Roy & Seignieurs, & nient aus Communes*, &c. That the Judgments of Parliament appertained only to the King, and to the Lords, and not unto the Commons: Thereupon they prayed the King, out of his ſpecial Grace, to ſhew unto them the ſaid Judgments, and the cauſe of them; that ſo no Record might be made in Parliament againſt the ſaid Commons, which are or ſhall be parties to any Judgment given, or hereafter to be given in Parliament, without their Privity. Whereunto the Archbiſhop of *Canterbury* gave them this Anſwer by the Kings Commandment, That the Commons themſelves are Petitioners and Demanders, and that the King (*s*) and Lords from all times have had, and ſhall have of right the Judgments in Parliaments in manner as the Commons have ſhewed.

(r) *Rot. Parl.* 1 *H.*4. *num.* 79. Exact Abridgment, *p.* 392.

(s) *Et que le Roy, & les Seigniours de tout temps, ont eues, & averont de droit, les Juggement in Parliament, en manere come meſmes les Communes ſont monſtres.*

How far the King and Houſe of Lords have been Judges of the Priviledges of the Houſe of Commons, I ſhall declare in that part of this Chapter wherein I treat of that Houſe.

SECT.

SECT. 5.

Of the Aſſiſtants to the Houſe of Lords.

HAving thus far treated of the Conſtituent Parts of the Houſe of Lords, I come now to the Aſſiſtants to this moſt Honourable Houſe; which were moſtly the (*t*) King's Great Officers, as well Clergy-men as Secular Perſons, who were no Lords or Barons of the Realm, as, namely, his Treaſurer, Chancellor of the Exchequer, Judges of his Courts at *Weſtminſter*, Juſtices in Eyre, Juſtices Aſſignes, Barons of his Exchequer, Clerks, Secretaries of his Council, and ſometimes his Serjeants at Law, with ſuch other Officers and Perſons whom our Kings thought meet to ſummon.

(*t*) *Prynne*'s Brief Regiſter, *part* 1. *ſect.* 3. *p.* 240.

The Judges and other Aſſiſtants of the Houſe of Lords.

The firſt Writ that Mr. *Prynne* finds extant in our Records, and which Sir *William Dugdale* mentions, is entred in the *Clauſe-Roll* 23 *E.* 1. *dorſo* 9. directed to *Gilbert de Thornton*, and thirty eight more, whoſe Names are in Sir *William Dugdale*; whereof there are eleven by the name of *Magiſtri*, three Deans, and two Archdeacons: only I find them differently ranked in Mr. *Prynne*, to what they are in Sir *William Dugdale*.

The Writ runs thus: *Rex dilecto & fideli ſuo Gilberto de Thornton, ſalutem. Quia ſuper quibuſdam arduis negotiis, nos & Regnum noſtrum, ac vos cæteroſque de Concilio noſtro tangentibus, quæ ſine veſtra, & eorum præſentia nolumus expediri, &c. Vobis mandamus in fide & dilectione, &c.* as in the uſual Summons to the Biſhops.

Sometimes, as 25 *E.* 1. there (*u*) was no Writ directed to them; but we find under the Name of *Milites*, with a Lines ſpace betwixt them and the Barons, thirteen named, which by other Records are known to be the King's Juſtices.

(*u*) *Cl.* 25 *E.* 1. *m.* 25. *dorſo.*

The differences in their Writs are moſtly theſe: Sometimes, as in 27 *E.* 1. it is, *Cum cæteris de Concilio noſtro habere volumus colloquium & tractatum*; or, as in 28 *E.* 1. (*w*) ſhowing the ſpecial Cauſe, *Quia ſuper Jure & Dominio quæ nobis in Regno Scotiæ competit, &c. cum Juris peritis, & cum cæteris de Concilio noſtro ſpeciale colloquium habere volumus & tractatum, vobis mandamus, &c. cum cæteris de Concilio noſtro ſuper præmiſſis tractaturis veſtrumque conſilium impenſuris.*

The difference in their Writs.

(*w*) *Cl.* 28 *E.* 1. *m.* 3. *dorſo.*

At the ſame time there are Writs to the Chancellor of the Univerſity of *Oxford*, to ſend four or five, *de diſcretioribus, & in Jure ſcripto magis expertis*; and to the Chancellor of the Univerſity of *Cambridge*, to ſend two or three in the like manner qualified: and then follow Writs to ſeveral Abbats, Priors, Deans and Chapters; and all theſe Writs mentioned the Buſineſs of the King's Claim to the Juriſdiction of *Scotland*: and in the Writs of Summons to the Archbiſhops, Biſhops, Abbats, Priors, Temporal Lords, Juſtices, and Sheriffs of Counties, that Particular is not mentioned: which ſhows, that the King ſummoned

Perſons ſkilful in the Law ſummoned from the Univerſities.

moned theſe particular Perſons, as moſt fit to ſearch and ſend their Chronicles to the Parliament: The Occaſion and Reſult whereof, and of ſending theſe Lawyers from the Univerſities, you may read at large in (*x*) *Matth. Weſtminſter*, and (*y*) *Walſingham.*

(*x*) *An.* 1302. *p.* 419. *to p.* 438.

(*y*) *Hiſt. Ang. p.* 32. *to* 58.

In ſome Writs, as that of 9 *E.* 2. (*z*) the Juſtices are appointed to expedite their Aſſizes, that they may not fail to be preſent at the Parliament, or to leave two to attend the Buſineſs of the King's Bench: And the 7 of *E.* 2. (*a*) That whereas they had appointed the Aſſizes at *Dureſm*, and other Parts in the Northern Circuit, at certain days after the time the Parliament was to convene, at which he wondred; he orders them to put off the Aſſizes, and attend. By which two Writs it appears, their Summons by Writ to attend and counſel the King in Parliament, was a *Superſedeas* to them to take Aſſizes during the Parliament; and that the Aſſizes and Suits of private Perſons ought to give place to the publick Affairs of the King and Kingdom in Parliament. Whoever deſires to know who were ſummoned in this manner, and the further variety of Summons, may conſult Mr. *Prynne*, and Sir *William Dugdale*'s Summons.

(*z*) *Cl.* 9 *E.* 2. *m.* 20. *dorſo.*

(*a*) *Cl.* 7 *E.* 2. *m.* 25. *dorſo.*

Juſtices to leave the Aſſizes to attend the Parliament.

From theſe Writs we may obſerve, firſt, That ſometimes the Perſons ſummoned were many in number, ſometimes very few, and always (*b*) more or leſs at the King's Pleaſure. Secondly, In latter times the Clergy-men were wholly omitted. Thirdly, That they were never licenſed to appear by Proxies. Mr. *Prynne* hath collected a great many Precedents to prove, that theſe Perſons thus ſummoned, together with the King's ordinary Council, had a very great Hand, Power, and Authority, not only in making Ordinances, Proclamations, deciding all weighty Controverſies, regulating moſt publick Abuſes, and puniſhing all exorbitant Offences out of Parliament, in the *Star-Chamber*, and elſewhere; but likewiſe in receiving and anſwering all ſorts of Petitions, determining and adjudging all weighty doubtful Caſes and Pleas, yea, in making or compiling Acts, Ordinances, Statutes, and tranſacting all weighty Affairs concerning the King or Kingdom, even in Parliaments themſelves, when ſummoned to them. Yet theſe have no Vote, but only are to ſpeak to ſuch Matters as their Opinions are required in, and ſit uncovered, unleſs the Chancellor or Lord Keeper give leave to the Judges to be covered.

Obſervations from theſe Writs.

(*b*) Brief Regiſter, *part* 1. *a p.* 366. *ad p.* 394.

The Employment of theſe Aſſiſtants.

SECT. 6.

Concerning the Houſe of Commons.

The Summons of the Knights, Citizens, and Burgeſſes.

I Now come to conſider the Honourable Houſe of Commons, and the Uſe, Conſtitution, and Priviledges of it, and ſhall firſt conſider the Summons by which they have their Power to act as an Houſe, and third Eſtate in Parliament.

Mr.

Mr. (*c*) *Prynn* hath cleared, that all the Writs of Summons directed to Sheriffs (in King *John*, and *Henry* the Third's time before 49 *H.* 3.) to send Knights to the King at set times, were either for Information of the Council what voluntary aid each particular County would grant the King in his great necessity, or to assist with Men and Arms, and were not elected as Representatives of the Commons, till 49 *H.* 3. To whom I shall refer the curious for Satisfaction, as also to Dr. *Brady*, who hath by his own Inspection, as well as the considerate application of what Mr. *Prynn* hath amassed (in his Books since his late Majesties Restauration, and after 1648) composed many most useful Observations for the understanding of the ancient customs, usages, and practices relating to Parliaments. Therefore I shall endeavour to be as short as possibly I can, and without obscurity contract what they and most others that treat of the House of Commons, have at large filled Volumes with.

(*c*) Second Part of Brief Register, *a p.* 1. *ad* 29.

The form of the Writ, 49 *H.* 3. to the Sheriffs is not (*d*) expressed, but after the recital of the Writ to the Bishop of *Duresm* and *Norwich*, and the *eodem modo* to the Bishops, Abbats, Priors, Deans, Earls, Lords, and Barons, there follows this entry in the Record, *Item mandatum est singulis Vicecomitibus per Angliam quod venire faciant duos Milites de legalioribus, probioribus, & discretioribus Militibus singulorum Comitatuum, ad Regem London, in forma prædicta.*

(*d*) *Cl.* 49 *H.* 3. *m.* 11. *dorso.*

Item in forma prædicta scribitur Civibus Ebor. Lincoln. & cæteris Burgis Angliæ, quod mittant in forma prædicta duos de discretioribus, legalioribus, & probioribus tam Civibus quam Burgensibus suis: and so to the Barons of the Cinque-Ports, which runs thus; *Rex Baronibus & Ballivis Portus sui de Sandwico. Cum Prælati & Nobiles Regni nostri tam pro negotio Liberationis Edwardi Primogeniti nostri, quam pro aliis Communitatem Regni nostri tangentibus, ad instans Parliamentum*, &c. *Vobis mandamus in fide & dilectione quibus nobis tenemini, firmiter injungentes, omnibus aliis prætermissis mittatis ad nos ibidem, 4 de legalioribus & discertioribus Portus vestri*, &c. *Nobiscum & cum præfatis Magnatibus Regni nostri tractatum & super præmissis consilium impensuri.*

From all which, it is observable, first, that in all probability the Writs then issued to the Knights, Citizens, and Burgesses, were the same in form and substance, with those to the Spiritual and Temporal Lords, and in those to the Sheriffs, *&c.* Secondly, the Qualifications of those to be elected are limited: Thirdly, It doth not appear whether the Counties themselves, or the Sheriffs alone were to elect. Fourthly, The Writs for electing Citizens and Burgesses were directed immediately to the Citizens and Burgesses themselves, not to the Sheriffs of the Counties. Lastly, that no Writ issued to the Citizens of *London*, their Liberties then being seized into the King's Hand, and that *York* and *Lincoln* are the only Cities mentioned particularly in the Roll.

Observations on the first Writ to the Barons of the Cinque-Ports.

The first Writs, entred at large in the Rolls, are those (*e*) 22 *E.* 1. wherein

(*e*) *Cl.* 22 *E.* 1. *m.* 6. *dorso.*

wherein is expressed, that the King intending a *Colloquium & Tractatum* with his Barons, and great Men, he commands that the Sheriffs cause to be elected two Knights, of the more discreet and more able to take Pains, *&c.* to come to *Westminster*, *&c.* with full Power for themselves, and the whole Community of the said County, to consult and consent each for himself and the said Community, to those things, which the Earls, Barons, and Nobles aforesaid unanimously ordain in the Premisses; so that for want of such like Power, the Business remain not undone.

De discretioribus & ad laborandum potentioribus——cum plena potestate pro se & tota communitate Com. prædicti, ad consulendum, & consentiendum pro se & communitate illâ, His quæ Comites, Barones, & Proceres prædicti concorditer ordinaverint in præmissis, &c.

I shall now insert what Variations I find in the Writs of Summons, promiscuously, whether to Knights, Citizens, or Burgesses, unless there be some remarkable difference to be observed.

The Qualifications in the Writs.

First, As to their Qualifications, generally, both Knights, Citizens, and Burgesses are to be *de legalioribus & discretioribus, & ad laborandum potentioribus.* In the Writ 25 *E.* 1. (*f*) it is *probioribus & legalioribus*; and some two, or all of these Epithetes are generally used, till (*g*) 22 *E.* 3. *m.* 7. *dorso*, where it is expressed, that the Knights be *gladio cinctos & ordinem militarem habentes & non alios, & de qualibet Civitate, & de quolibet Burgo duos Burgos de aptioribus, discretioribus, probioribus, & fide dignis Militibus, Civibus & Burgensibus*, and in the Twenty fourth of *E.* 3. there is an addition and limitation, *Qui non sunt Placitorum, aut querelarum manutentores, aut ex hujusmodi quæstu viventes, sed homines valentes, & bonæ fidei, & publicum commodum diligentes eligi:* and the self-same Limitations are in the 25, 28, and 29 *E.* 3. So that it was used so long as the King thought fit. In (*h*) 26 *Ed.* 3. it is *unum Militem de provectioribus, discretioribus, & magis expertis Militibus*, and so for Citizens and Burgesses: by which it appears the King desired not any under Age (as now is allowed) to be chosen. In 31 *Ed.* 3. besides (*i*) the usual words *de discretioribus & probioribus*, there is added *de elegantioribus personis eligi.* Which in no Writ else before or after is to be found. In the 36 *E.* 3. (*k*) it is *de melioribus & validioribus Militibus*, &c. That of the Forty fourth of (*l*) *E.* 3. runs, *Duos Milites gladiis cinctos & in Armis & Actibus Armorum magis probatos & circumspectos & discretos.*

(*f*) *Cl.* 25 *E.* 1. *m.* 6. *dorso.*

(*g*) *Cl.* 22 *E.* 3. *m.* 7. *dorso.*

Cl. 24 *E.* 3. *par.* 2. *m.* 3. *dorso.*

No Maintainers of Suits, &c. to be chosen.

(*h*) *Cl.* 26 *E.* 3. *m.* 14. *dorso.*

(*i*) *Cl.* 31 *E.* 3. *m.* 2. *dorso.*

(*k*) *Cl.* 36 *E.* 3. *m.* 16. *dorso.*

(*l*) *Cl.* 44 *E.* 3. *m.* 12. *dorso.*

It appears by the Parliament Roll, 46 (*m*) *E.* 3. That it was accorded, and assented to in that Parliament, and an Ordinance made, That no Lawyer pursuing Business in the Court of the King, nor any Sheriff while he was Sheriff, should be returned, or accepted Knights of the Counties; and if any were so returned, they should have no wages. Therefore in the fourteenth Number of the said Roll, it is thus expressed, *Mes voyet le Roy, que Chevalers & Serjaunts*, (*i. e.* Esquires, not Serjeants at Law) *des meulieur valeurs du paiis soiz retornez desore Chevalers en Parlement, & quils sount esluz en plein Counts.* That Knights and Esquires of greatest value in their Country should be chosen in the full County.

(*m*) *Nul home de Ley pursuont busoignes en la Courte de Roy, ne Viscount pur le Temps que il est Viscount, soient retournez, ne acceptez Chevalers des Countees, neque ces qui sont Gentz de Ley, & Viscounts ore retournez au Parlement eient Gages. Rot. Parl.* 46 *E.* 3. *num.* 13.

The

The very next Writ 47 *E.* 3. (*n*) runs thus, *Duos Milites gladiis cinctos ſeu Armigeros*, (which explains the word *Serjaunts* before, as in that Age being reputed Servants to Knights, as holding Lands in ſuch a Tenure of them) *de dicto Com. digniores & probiores, & in Actibus Armorum magis expertos, & diſcretos, & non alterius conditionis, & duos Cives & Burgenſes, qui in navigo & exercitio mercandiſarum notitiam habeant meliorem, eligi*; and then in the Cloſe, follows, *Nolumus autem quod tu ſeu aliquis alius Vicecomes Regni prædicti, aut aliquis alterius conditionis quam ſuperius ſpecificatur, aliqualiter ſit electus*; and the laſt Clauſe, till the 11 *Rich.* 2. was uſed, and from the 12*th.* to the *laſt* of *Rich.* 2. the words *alterius conditionis* are omitted, and ſo in *Ed.* Fourth's time; but the Clauſe, *that the Sheriff be not choſen*, is retained.

(*n*) *Cl.* 47 *E.* 3. *m.* 13 *dorſo.*
To be Knights girt with Swords, and skilful in Arms.

To theſe we may add, That Bannerets were not to be choſen Members of the Houſe of Commons, (*o*) 7 *R.* 2. in the caſe of *Thomas Camoys* thus, *Nos advertentes quod hujuſmodi Banneretti ante hæc tempora Milites Comitatuum ratione alicujus Parliamenti eligi minime conſueverunt*; *ipſum de Officio Militis ad dictum Parliamentum pro Communitate Com. prædicti venturi, exonerari volumus*, and ſo commands the Sheriff to chuſe another.

(*o*) *Cl.* 7 *R.* 2. *m.* 32. *dorſo.*
No Banneret to be choſen.

In the 11 *R.* 2. we find a (*p*) new qualification in the Writ, That the Knights, *&c.* ſhould be *Gladio cinctos, idoneos & diſcretos, & in Debatis modernis magis indifferentes*; but the King being informed, that this new Clauſe, *indifferent in the modern Debates* (which only was to the Knights, not to the Citizens or Burgeſſes) was contrary to the forms of Elections anciently uſed, and againſt the Liberty of the Commons, he ſuperſeded, and revoked that Clauſe by another Writ.

(*p*) *Cl.* 11 *R.* 2. *m.* 24. *dorſo.*
A new Clauſe recalled.

In the 5 *H.* 4. an unuſual new (*q*) Clauſe was added to the prohibition of Sheriffs, *Nolumus*, &c. *nec Apprenticius aut aliquis alius homo ad Legem aliqualiter ſit electus*: Concerning this and that in the 46 *Ed.* 3. the curious Reader may peruſe Sir *Ed.* (*r*) *Coke*, whoſe opinion Mr. *Prynne* (*s*) from the Roll, and from *Walſingham*, clearly confutes, however that Parliament is ſince called *indoctum.*

(*q*) *Cl.* 5 *H.* 4. *par.* 2. *m.* 4. *dorſo.*
No Lawyers to be choſen.

(*r*) 4 *Inſtit. p.* 10.
(*s*) Second Part of Brief Regiſter, 124: *Hiſt. Ang. p.* 414.

After this, upon making the Statutes 7 *H.* 4. *c.* 15. 11 *H.* 4. *c.* 1. upon the Commons Petition, the ancient form for the Writs was ſomewhat altered and enlarged, though little as to the qualifications, but as to the manner of Elections, *&c.* of which I ſhall diſcourſe by it ſelf.

23 *H.* 6. *c.* 15. (*t*) a Statute was made concerning Elections of Knights, therefore in the Writs of Summons 25 *H.* 6. it runs thus, *Milites notabiles, ſeu ſaltem notabiles Armigeri, hominesve generoſi de natu eorundem Com. qui habiles ſunt Milites fieri, & nullus homo de gradu valettæ, & gradu inferiori de eſſendo Milites hujuſmodi exiſtant.*

(*t*) *Cl.* 25 *H.* 6. *m.* 24. *dorſo.*
Only Knights, Eſquires, or Gentlemen to be Knights of Shires.

Having thus treated of the Ancient Qualifications, I ſhall ſubjoin the modern, which are compriſed in ſhort, To cauſe

The Modern Qualifications.

(*u*) two

(*u*) *Duos milites gladiis cinctos magis idoneos; & diſcretos— Cives & Burgenſes, de diſcretioribus & magis ſufficientibus.*

(*n*) two Knights girt with Swords, the moſt fit and diſcreet of the County aforeſaid, and of every City of that Country two Citizens, of every Burrough two Burgeſſes of the diſcreeter and moſt ſufficient to be freely and indifferently choſen, *&c.*

The Electors.

Having thus diſcourſed of the Qualifications of the Perſons elected; before I make any remarks upon the whole, it is fit to note the Electors and manner of Election. Some are of opinion, that, as the greater and leſſer Tenents *in Capite*, after King *John*'s Charter, were the only Lay conſtituent Members of Parliament, ſo the ſtill ſmaller Tenents to thoſe that held *in Capite*, and the ſmaller Tenents *in Capite*, if not they only, did elect the Knights of Shires.

But I ſhall, as fair as Records will give me light, by particulars clear this, and the power that was given them by the Community of the County to the Knights.

(*w*) *Cl.* 22 *E.* 1. *m.* 6. *dorſo.*

The firſt (*w*) Writ hitherto found, is only, That the Sheriff ſhall cauſe to be choſen two Knights, and that they have power, *&c.* as I have before related in the Writ to the Sheriff of *Northumberland*; it is to cauſe two Knights to come, choſen by the conſent of the County, and to have full power for themſelves ſingly, and the Community of the County; and ſo likewiſe, two Citizens and two Burgeſſes with the Aſſent of the Community of the City or Burrough. The Knights were elected by the Community of the County, that is, as Dr. *Brady* makes it clear in his (*x*) *Gloſſary*, the greater and leſs Tenents *in Capite*; and as for Cities and Burroughs, ſuch were the chuſers as held Lands in Free Burgage of the King, or ſome great Lords who held *in Capite*.

See below the Choice in *Yorkſhire*.

(*x*) *P.* 33, 34.

(*y*) *Bundel. num.* 1.

Ann. 26 *E.* 1. (*y*) expreſſeth no more but the Election in general, and the power to be given the Elected, *Ita quod dicti Milites plenam & ſufficientem poteſtatem pro ſe & Communitate Com. prædict. & dicti Cives & Burgenſes pro ſe & Comunitate Civitatum & Burgorum prædictorum diviſim ab ipſis tunc ibidem habeant*, &c.

Manucaptors or Pledges, that Knights elected ſhould meet in Parliament.

Before I proceed any further, we muſt note, that in the Returns made by the Sheriffs to theſe Writs, there are found 26 *E.* 1. four Manucaptors for every perſon elected, and in others two: theſe did engage themſelves, that the Knights, Citizens, or Burgeſſes ſo elected ſhould appear at the Parliament according to the time appointed.

In the County of *Bedford*, I find *Rich. de Rous* Knight elected, and no Manucaptors returned, but that the Sheriff diſtrained eight Oxen, and four Horſes of him, that he ſhould come at the Day, *&c.* This was done by vertue of that Clauſe in the Writ, *& eos ad nos ad prædictos diem & locum venire facias*; and this way of having Manucaptors, continued till the 12 *E.* 4. (*z*) though many had none in latter times. Mr. *Prynne* obſerves, That the Knights in every Shire were elected in the full County, by and for the whole County, and that the Citizens and Burgeſſes were then alſo elected *per totam Communitatem.*

(*z*) Brief Regiſter, *part* 2. *p.* 50.

In

In all the Writs of *Richard* the Second, there is this Clauſe more fully inſerted than in any before; That the Election be *in pleno Comitatu tuo de communi aſſenſu ejuſdem Comitatus.*

Upon the making the Statutes 7 *H.* 4. *c.* 15. and 11 *H.* 4. *c.* 1. for regulating abuſes in Elections, the Writs of Summons 8 *H.* 4. and all his time, and ſo (*a*) 1 *H.*5. were accordingly altered, that Proclamation ſhould be made by the Sheriff, in the next County day after the receipt of the Writ, and the Knights to be choſen *libere & indifferenter*, free and indifferently by thoſe that were preſent at the Proclamation; and ſhall return the names of the Knights, Citizens, and Burgeſſes, in certain Indentures betwixt the Sheriff, and thoſe that were preſent at the Election, whether the perſons elected were preſent or not, *&c.*

The Statutes for ordering Elections.

(*a*) *Cl.* 1 *H.* 5. *m.* 9. & 37.

Free Choice.

Return of Indentures.

The Returns to the Writs 1 *H.* 5. ſhew the Election to be by common aſſent and conſent of thoſe preſent, as that for *Leſtwythiel*, where 32 Electors are named, and that for *Surry* hath only four, but adds, *& omnium aliorum fidelium ibidem exiſtentium.* The Indenture for *Suſſex* is in French, and ſaith, *Les Gentilles homes & Communes*, the Gentlemen and Commons had choſen *Richard Sayvile, &c.*

Who were Chuſers of Burgeſſes.

The Sheriff of *Briſtol* ſaith, *Coadunatis diſcretioribus & magis ſufficientibus Burgenſibus, ex aſſenſu Johannis Clive Majoris Villæ prædictæ, & aliorum plurimorum exiſtentium eligimus*, &c. The elected were two Burgeſſes of *Briſtol*, *Thomas Norton* and *John Leyceſter*, both for Knights for the County of *Briſtol*, and Burgeſſes for the *Villa* of *Briſtol*; and in another theſe are called *Burgenſes* and *Mercatores.*

The next alteration that I find, is after the Statute of the (*b*) 8 *H.* 6. *c.* 7. which agrees with that of 23 *H.* 6. that every Knight to be choſen within the Kingdom of *England* to come to the Parliament, ſhall be choſen by ſuch as live in the County; whereof every one have a free Tenement to the value of Forty Shillings *per annum*, beyond all Reprizes; and that thoſe who are elected be abiding, and reſident in the ſaid County, and the Sheriff have power upon Oath to examine the Electors, what yearly Eſtate they have, and that the Sheriff incur the penalty of 100 Marks for his falſe return, and the Knights ſo returned loſe their Wages.

(*b*) *Cl.* 23 *H.*6.*m.*21. *dorſo.*

The Knights to be reſident in the County, and the Electors to have at leaſt 40 *s.* a year Lands.

There are ſeveral Precepts that command, that at ſuch Elections (*c*) no perſon come there Armed, or arrayed in Warlike manner, or do, nor attempt any thing that may be in diſturbance of the Kings Peace, or the Election; as particularly is expreſſed in the Writs, 2 *E.*3.*m.*31.*dorſo*, and ſeveral others to be peruſed in the firſt part of *Prynne*'s *Brief Regiſter*, *a p.*27.*ad* 28, 177, 214. *Cl.* 5 *E.* 2. *m.* 22. *dorſo*, 18 *H.* 6. and ſeveral other places which were prohibited, that Elections thereby might be made free.

(*c*) *Proclamari & inhiberi facias, ne aliqua perſona tunc ibidem armata, ſeu modo guerrino arraiata, ad electionem illam accedat.* Rot. Parl. 8 H.6. m. 13. num. 18.

None to come in an Hoſtile manner to elect.

That it may appear, that the Elections in ancient times were not made by ſuch as we now call Freeholders of forty Shillings

a Year (which now is eſtabliſhed by Statute Law) I think it not amiſs to inſert what I find of a particular uſage in *Yorkſhire*; whereas it appears by the firſt Indentures of the Elections and Returns of Knights for the County of *York*, that the Atturnies of the Archbiſhop of *York*, and of ſundry Earls, Lords, Nobles, and ſome Ladies, who were annual Suitors to the County Court of *Yorkſhire*, were ſole Electors of the Knights, as appears by the Return 13 *H.* 4. upon the Writ of 12 *H.* 4. betwixt *Edm. Sandford* Sheriff on the one part, and *Will. Holgate* Attorney of *Ralph* Earl of *Weſtmorland*, *Will. de Kyllington* Atturney of *Lucy* Counteſs of *Kent*, *Will. Heſham* Atturney of Pet. Lord *de Mulolacu*, *William de Burton* Atturney of *William* Lord *de Roos*, *Rob. Evedal* Atturney of *Ralph* Baron of *Grayſtock*, *William de Heſton* Atturney of *Alex. de Metham* Knight, *Henry de Preſton* Atturney of *Henry de Percy* Knight, chuſe *John de Ever* Knight, and *Robert de Plompton* Knight.

(d) *Prynne's Brevia Parliamentaria Rediviva, p.* 152, 153, 154.

Atturneys of Noblemen and Ladies in *Yorkſhire* Electors.

Alſo 2 *H.* 5. The Indenture is betwixt *William de Harrington* Knight, Sheriff of *Yorkſhire*, and *Robert Mauleverer* Atturney of *Henry* Archbiſhop of *York*, *William Fencotes* Atturney of *Ralph* Earl of *Weſtmorland*, *William Archer* Atturney of *John* Earl Marſhal, and ſo the Atturnies of *Hen. le Scrop* Knight Lord of *Maſham*, of *Peter de Mulolacu*, *Alexander de Metham*. *Robert Roos*, of *Margaret*, which was Wife of *Henry Vavaſor* Knight, and of *Henry Percy*.

The like are found in the Eighth and Ninth of *H.* 5. and the 1, 2, 3, 5, 7 *H* 6. in all which the Atturnies only of Nobles, Barons, Lords, Ladies, and Knights, who were Suitors, made the Elections of the Knights of *Yorkſhire*, in the County Court, and ſealed the Indenture. I have a *French* Letter of Atturney from the Lady *Roſs*, to that purpoſe; concerning which, if God give me Life, I ſhall give an account in my Antiquities of *Yorkſhire*,

This Method ceaſed before 25 *H.* 6. at which time the Return made by *Robert Ughtred* Sheriff of *Yorkſhire*, hath the Names of Forty two Gentlemen, moſt of which are of very ancient Families, and ſuch as had great Eſtates then, and ſo continue to have; though I doubt not but (as it is the Cuſtom now) the much leſſer part of thoſe preſent were only inſerted as Parties to the Indentures. However by the Community we may underſtand, who elected were not like the Freeholders now.

What the Knights, Citizens, and Burgeſſes were ſummoned for.

The next thing we are to conſider in the Writs of Summons to Parliament, is what the Knights, Citizens, and Burgeſſes ſo elected, were by the Writ authorized to do.

(e) *Ad conſulendum, & conſentiendum, pro ſe, & communitate illa, his quæ Comites, Barones, & Proceres prædicti concorditer ordinaverint in præmiſſis.* Cl. 22 E. 1. m. 6. dorſo.

The firſt Writ (*e*) that we find for Election of Knights of Shires, expreſſeth their convening to be, To conſult, and conſent for themſelves, and the Community, to thoſe things which the Earls, Barons, and foreſaid Nobles unanimouſly ſhould ordain in the premiſſes; and the Writ to the Sheriff of *Northumberland* is *ad audiendum & faciendum quod & tunc ibidem*

dem plenius injungemus, to hear and do what we ſhall then and there fullier enjoin.

In the Writ 25 (*f*) *E.* 1. the King intending to confirm the great Charter, and Charter of the Forreſt; that he might levy the eighth part of all the Goods of his Lieges, for his moſt urgent neceſſity againſt the *French*; convenes the Parliament before Prince *Edward* his Son, and the Knights are to meet to receive the ſaid Charters, *& facturi ulterius quod per dictum Filium noſtrum ibidem fuerit ordinatum*; to do further what ſhould be ordained by the Prince.

(*f*) *Cl.* 25 *E.* 1. *m.* 6. *dorſo.*

The Writ 25 *E.* 1. (*g*) expreſſeth that the Knights, Citizens, and Burgeſſes, are to do what then ſhall be ordained in the Premiſſes by the Common Council; and ſo the Returns are *ad faciendum quod tunc ibidem ordinabitur.*

(*g*) *Bundel. num.* 1. *Ad faciendum, quod tunc de Communi Concilio ordinabitur in præmiſſis.*

In 17 *E.* 2. (*h*) it is enjoyned, that the Knights, *&c.* be there, *ad faciendum & conſentiendum hiis quæ in dicto Parliamento ordinari contigerit ſuper negotiis antedictis.*

(*h*) *Cl.* 17 *E.* 2. *m.* 27. *dorſo.*

Anno 21 *E.* 3. (*i*) there is ſome more Power granted to the Knights, *&c. ad tractandum, conſulendum, & conſentiendum hiis quæ tunc favente divina Clementia contigerit ordinari.* Whereas before it was only to hear and do what was ordained by the King, the Prince, or the great Council; here it is to treat, conſult and conſent to what then ſhould be ordained. But the Writ *Anno* 36. (*k*) explains who had the ordaining Power, for it runs, *ad conſentiendum hiis quæ per nos, ac dictos Prælatos, Magnates & Proceres ordinari contigerit.* So here the King, the Biſhops, and the Nobles ordain, and the Houſe of Commons are to aſſent. *Anno* 47 *E.* 3. (*l*) the words are, *ad faciendum, & conſentiendum eis quæ tunc de Communi Concilio Regni noſtri favente Domino contingant ordinari*; which Form is continued to this day: ſo that according to the import of the Writ, the Commons are to do and aſſent to what ſhall be ordained in Parliament; by which two words I ſuppoſe they have the full Power to frame Bills, and to aſſent, which alſo implies a Power of Diſſent to the Bills ſent to them by the Houſe of Lords.

(*i*) *Cl.* 21 *E.* 3. *m.* 12. *dorſo.*

(*k*) *Cl.* 36 *E.* 3. *m.* 16. *dorſo.*

(*l*) *Cl.* 47 *E.* 3. *m.* 13. *dorſo.*

Having thus drawn into one Scheme, the moſt material Alterations, and variety of Expreſſions, from all the Writs of Summons, of Mr. *Prynne* and others, that fill ſo great Volumes, and truly (as I hope) quoted all the Records, which illuſtrate theſe Particulars, and in a very clear Landſcape repreſented the moſt material Parts of the two ſo noble and wiſely conſtituted Houſes; from whoſe great Wiſdom (with the Sovereigns Authority and *Fiat*) all thoſe wholeſome and neceſſary Laws are derived, that eſtabliſh this great Monarchy: I ſhall now paſs to ſome general Remarques, and from thence to the ancient and modern Priviledges of the Houſe of Commons.

Kings not confined to two Knights, *&c.*

First it is very obvious, that the Kings of *England* formerly were not confined to ſummon only two Knights, Citizens, and Burgeſſes as now; for *Anno* 22 (*m*) *E.* 1. the King iſſued out his Writs of Summons for two Knights of every County, after

(*m*) *Cl.* 22 *E.* 1. *m.* 6. *dorſo.*

which, follows a ſecond Writ, entred immediately after in the ſame Dorſe, for other two Knights in theſe words, *Præter illos duos Milites eligi facias alios duos Milites legales*, &c. So 28 *E.* 1. three Knights, or other three *de probioribus, legalioribus, & diſcretioribus Liberis Hominibus*, &c. *eligi.* Theſe *probi & legales homines* were ſuch as held in *Capite.* So in the (*n*) 26 of *E.* 3. the King conſidering that it was Harveſt time, that he might not withdraw Men from that Employment, *unum tantum Militem de quolibet Comitatu ad dictum Concilium mittendum habere volumus iſta vice.* So (*o*) 45 *E.* 3. the King in his Writ ſaith, That he might ſpare the Labours and Expences, he will have treaty with ſome only of the *Magnates*, (by which the Knights of Shires here are to be underſtood) Citizens and Burgeſſes, therefore appoints one Knight for the County of *Kent*, one Citizen for *Canterbury*, and one for *Rocheſter*, whom he names, if they be alive, otherwiſe the Companion of him that was before.

(*n*) *Cl.* 26 E. 3. *m* 14. *dorſo.* *Ut homines ab iſta occupatione autumpnalibus quo minus poſſumus retrahamus.*

(*o*) *Cl.* 45 E. 3. *m.* 21. *dorſo. Ordinavimus ut laboribus parcatur, & expenſis.*

One Citizen, and one Burgeſs.

In 18 *E.* 3. the Writs iſſued only for two (*p*) Knights in every County, and no Writ for Electing Citizens or Burgeſſes; and 26 *E.* 3. the Writs are for one Knight in every County, and no Citizens or Burgeſſes: yet in (*q*) this the King iſſued out particular Writs to Mayors and Bailiffs of Cities and Burroughs, to elect, and return one Citizen for every City, and one Burgeſs for every Burrough.

(*p*) *Brevia Parl. rediviva, p.* 144. *ad* 147.

(*q*) Theſe things are now reduced to a certainty by the Statutes 5 *R.* 2. *c.* 4. and others. *Prynne's Brief Regiſt. par.* 2. *p.* 32.

Secondly, That the Kings of *England* had a Power to ſuperſede particular Perſons being choſen, to reſummon thoſe that returned without leave, or appoint others in their places, and omit ſending Writs to ſome Cities and Burroughs that had formerly ſent, and to create new Burroughs.

(*r*) See Brief Regiſt. *p.* 118. *ad* 123.

So the Lord *Camoys*, (*r*) as I have inſtanced before, being elected by the King's firſt Writ, the King by new Writ declared it null, and ordered to proceed to a new Election, and the King appears in that Age to be the ſole Judge of void, and double Elections. So in the (*s*) 28 *Ed.* 1. *Phillip de Geyton*, being choſen one of the Knights for the County of *Northampton*, and could not attend, the King orders another to be choſen. So 5 (*t*) *E.* 2. becauſe the Knights, Citizens, and Burgeſſes of *Yorkſhire*, went away for certain cauſes not there expreſſed (it is probable without the Kings Leave) therefore he ſends his Precept to the Sheriff, to cauſe them to return, *vel alios ad hoc idoneos loco eorum ſi ad hoc vacare non poſſint.* But this more eſpecially is to be taken notice of when I come to diſcouſe of Priviledges of Parliament.

(*s*) *Cl.* 28 E. 1. *m.* 7. *dorſo.*

(*t*) *Cl.* 5 E. 2. *m.* 26. *dorſo.*

The King makes new Burroughs.

As to the laſt particular of the King's appointing new Burroughs, impowering them by ſpecial Charters to ſend Citizens and Burgeſſes to all Parliaments to be afterwards held by the King, his Heirs, and Succeſſors, Judge (*u*) *Hobarts* hath cleared it, and (*w*) Mr. *Prynne* hath reduce them all into Chronological Tables, and he makes it a certain Note, that where the Sheriff makes his Return, *nulli ſunt Cives nec Burgenſes in*

(*u*) Reports, *p.* 14, 15.

(*w*) Brief Regiſter, *par.* 2. *p.* 170.

in Com. prædict. or *non est alia Civitas vel Burgus*, or *non sunt alii Burgi*, we may certainly conclude that every City or Burrough omitted then out of those ancient Returns, and since returned for Cities or Burroughs, were made Cities and Burroughs since that time, as the curious may see at large in his (x) *Brevia Parliamenta Rediviva.*

(x) *P.* 223. *ad* 297.

Old Burroughs discontinued, for what reason.

But on the other side, we find many Burroughs who elected Burgesses in 26 *E.* 1. (as particularly *Pontefract* and *Malton* in *Yorkshire*) had no Summons that are yet found, from 26 *E.* 1. to 12 *E.* 4. Now whether this were by the King's special Directions, the Desire of the Places, (as not being willing to be at the Charge of paying their Burgesses Wages, which were in that Age exacted) or the Carelesness of the Sheriffs, is a Question not easily to be determined; though it is certain, it might be by any of these Causes. That Poverty was a principal Cause, appears in the numerous Returns of the Sheriffs of *Lancashire*, (y) when *Lancaster* and *Preston* before 33 *E.* 3. used to return Burgesses; but from thence, till after the Reign of King *Edward* the Fourth, we find the Return to be, *Non est aliqua Civitas neque Burgus in Balliva mea*: And the Reason is given in the Return 38 *E.* 3. *Propter eorum debilitatem seu paupertatem, inopiam & paupertatem*, or *paupertatem & debilitatem*, throughout the whole. For it was anciently really reputed a great Burthen for poor and small Burroughs to send Burgesses to Parliament, they being bound to defray their Charges. (z) So the Bailiffs and Commonalty of *Toriton* did repute it, and petitioned the King in Parliament to free them from this Burthen; as likewise did the Abbat of *Leicester*, *Anno* 14 *E.* 3. the Prior of St. *James* without *Northampton*, *Anno* 12 *E.* 2. by reason (a) of their Poverty, and extraordinary Expences in repairing to Parliaments, to be exempted from all future Parliaments, they not holding by Barony; and obtained their Request. So the Abbat of St. *Augustine* in *Bristol*, *Pat.* 15 *E.* 3. *p.* 1. *m.* 13.

(y) *Id. p.* 236.

(z) *Pat.* 42 *E.* 3. *par.* 1. *m.* 8.

(a) *Selden's* Titles of Honour, *p.* 730. *ad* 734. *Coke* 4. *Instit. p.* 44, 45.

Mr. *Prynne* (b) owns, That the King by his Letters Patents may exempt a Burrough unduely charged by the Practice of Sheriffs or others to send Men to Parliament against Right and common Usage; but not (c) such as by Duty and Custom ought to send and find Burgesses. Under this Head we may consider the Temporary (d) Exemption of *R.* 2. 6 *Regni*, to the Burgesses of *Colchester*, for five years, in consideration of the new building and fortifying their Walls: Yet this did not exempt them; for it was against the Statute made 5 *Ric.* 2. (e) wherein it is expresly provided, That all Persons and Commonalties which shall from henceforth have Summons to the Parliament, shall come in the manner as they be bound to do, and have been accustomed, within this Realm of *England*, of old time: And the Sheriffs are punishable who leave out of the said Returns any Cities or Burroughs which be bound, and of old times were wont to come to the Parliament. And in (f) 23 *H.* 6. it is said, That divers Sheriffs of the Counties have sometimes

(b) *Brev. Parl. rediviva*, *p.* 240.

(c) 15 *E.* 3. *Stat.* 2. *c.* 6.

(d) 5 *R.* 2. *c.* 4. 23 *H.* 6. *c.* 15. See more at large for this, *Prynne's* Animadversions on Sir *E. Coke's Instit. p.* 32.

(e) 5 *R.* 2. *Parl.* 2. *c.* 5.

Sheriffs punishable that omit summoning.

(f) *C.* 15.

ſometimes returned none of the Knights, Citizens, and Burgeſſes, lawfully choſen, but ſuch which were never duly choſen, and other Citizens and Burgeſſes than thoſe which by the Mayors and Bayliffs were to the ſaid Sheriffs returned; and moreover made no Precepts to the Mayors or Bayliffs for the Electing of Citizens and Burgeſſes to come to Parliament. Which makes Mr. *Prynne* (*g*) infallibly reſolve, that Sheriffs did before theſe Acts, arbitrarily iſſue out their Precepts to what Cities and Burroughs they pleaſed, which they might the more freely do, becauſe the Precept to them was indefinite *de qualibet Civitate & quolibet Burgo*, uſed in all Writs ſince the 23 (*h*) *E.* 1. without deſigning the particular Cities or Burroughs by name. By which means Sherriffs might uſe a kind of Arbitrary Power according as their Judgment directed them, or their affections of favour, partiality, malice, or the ſolicitations of any private Burrough to them, or of Competitors for Citizens or Burgeſſes places within their County, ſwayed them; which opinion of Mr. *Prynn's*, as alſo that no new Burroughs by the Kings mere Grant, or the Houſe of Commons Order, can be legally created, or old long diſcontinued Burroughs be enabled by Vote of the Houſe of Commons to chuſe and return Burgeſſes to our Engliſh Parliaments, I ſhall leave to the diſcuſſion of thoſe it may concern.

(*g*) *Brev. Parl. rediv. p.* 241.

Sheriffs formerly took liberty what Places to ſend Writs to.

(*h*) *Membr.* 4. *dorſo.*

There was one Cuſtom anciently uſed (which was taken away by the Statute of the 36 *H.* 6.) that in many Counties, the Knights, Citizens and Burgeſſes were elected on the ſame day in their County Courts, by the Suitors or others reſorting to it; or by four or five Citizens and Burgeſſes only (whereof the Mayor, Bayliffs or chief Officer was uſually one) ſent from every City and Burrough to the County Court, there to elect their Citizens and Burgeſſes, ſo ſoon as the Knights were choſen, returning them often in one (*i*) Indenture, or the Knights alone, and the Citizens and Burgeſſes in another, under the Seals of the Citizens and Burgeſſes electing them, as appears by the Indenture for *Cumberland* 2 *H* 5. and that of *Kent* 12 *H.* 4. of *Wilts* 1 *H.* 5. and *Bedford* 2 *H.* 5. Before I diſmiſs this head, I ſhall note out of the great (*k*) Collections of Mr. *Prynne*, that the total number of the Cities, Burroughs and Ports, either ſummoned by the Sheriffs Precepts or Writs to Elect and Return, or actually electing and returning Citizens, Burgeſſes or Barons of the Cinque Ports, from King *Edward* the Firſt's Reign, to the end of *Edward* the Fourth, were but a Hundred and Seventy, and no more, whereof Seven never ſent after *E.* 1*ſt*'s. time, and Twenty of them but once during theſe Kings Reigns, and Thirteen of our Abbats, and Twenty Seven of our Priors were ſummoned to our Parliaments but once, and ſeveral Burroughs but twice, thrice, four or five or ſix times, all the whole time elſe being omitted: and as ſome were thus neglected, ſo new ones ſupplied the number. In *Edward* the Second's time Nineteen new Burroughs being added, and as many

Knights, Citizens, and Burgeſſes elected at the County-Court the ſame day.

(*i*) *Brev. Parl. rediv. p.* 176.

(*k*) *Ibid. p.* 223.

How many Cities and Burroughs anciently.

New Burroughs erected in ſeveral Kings Reigns.

many in *Edward* the Third's time. During the Reigns of *Richard* the Second, *Henry* the Fourth and Fifth, no new Burroughs created at all; and during the Forty Nine Years Reign of *Henry* the Sixth, but Five new Burroughs; and in *Edward* the Fourth's time but one. He ſaith, that Fourteen new Burroughs have been made in *Cornwal* ſince K. *Ed.* 4. (*l*)

(*l*) *Idem*, 230.

By which is diſcovered the Error of the Compiler of the abſurd groſs late Impoſture, Intituled, *Modus tenendi Parliamentum*, ſo magnified by Sir *Edward Coke*, (*m*) beyond all bounds of Truth and Modeſty; as alſo the great miſtake of our learned judicious Antiquary (*n*) Mr. *Lambard* and (*o*) others of great note, who affirm that the true original Title and Right of all our ancient Cities and Burroughs, electing and ſending Burgeſſes and Citizens to our Parliaments, is Preſcription time out of mind, long before the Conqueſt; it being a Privilege they actually, and of right enjoyed in *Edward* the *Confeſſor*'s time or before, and exerciſed ever ſince: Indeed the whole ſeries of the great Councils in the *Saxon*, *Daniſh* and *Norman* Kings Reigns to the Forty Ninth of *Henry* the Third, evince the contrary.

(*m*) 4. *Inſtit. p.* 12. 1. *Inſt. p.* 69. 2. *Inſt.* 7, 8. Preface to ninth Report.

(*n*) *Archaion*, *p.* 257.

(*o*) *Doderidge* of the Antiquity of Parliaments.

As to the Wages of the Knights, Citizens and Burgeſſes, it being a thing now obſolete (though not out of force by thoſe that would claim them) I ſhall only note, that the firſt Writ for them, is coeval with our Kings firſt Writs of Summons; and the reaſon given in the Writ is, That whereas the King had ſummoned two Knights, *&c.* and they had ſtayed (*p*) longer than they believed they ſhould do, by reaſon of which they had been at no ſmall Expence: therefore the King appoints the Sheriff by the counſel of Four lawful Knights, to provide for the Two Knights of the Shire their reaſonable Expences.

The Wages of Knights, Citizens, and Burgeſſes.

(*p*) *Ac iidem Milites moram diuturniorem quam credebant traxerint ibidem, propter quod non modicas fecerint expenſas.* Cl. 49 H. 3. m. 10. dorſo.

The Writ of the 28 *Ed.* 1. (*q*) commands that they have *rationabiles expenſas ſuas, in veniendo ad nos, ibidem morando, & inde ad propria redeundo*; their reaſonable Expences in coming to the King, ſtaying there, and returning to their homes. The like we find for the Citizens and Burgeſſes in the 1 *Ed.* 2. there was Four Shillings a day allowed for every Knight, and Two Shillings for every Citizen and Burgeſs.

(*q*) *Rot. Clauſ.* 28 *E.* 1. *m.* 12. *dorſo.*

Mr. *Prynne* (*r*) gives many good reaſons why theſe Wages were allowed, ſome of which I ſhall recite: As firſt, that all Laws allow Sallaries for Services, and thoſe being public Servants and Repreſentatives or Atturneys for the Counties, Cities, Burroughs, to conſult about the great and arduous Affairs, neceſſary Defence, Preſervation and Wellfare of the King and Kingdom, and theirs, for and by whom they were intruſted; it is reaſon (as they receive the benefit of their good Service, in giving their good Advice towards the redreſſing of Grievances, and making wholſom Laws) that they ſhould have allowed their neceſſary Expences. Secondly, It appears in ancient times, there was no ſuch ambition to be Parliament-

(*r*) Brief Parliamentary Writs, *part* 4. *p.* 4.

men

men as of late, but the Perſons elected thought it a burthen; therefore leſt being elected they ſhould neglect to repair to the Convention, they had Sureties called Manucaptors for their Appearance. Thirdly, This obliged the Counties, Cities and Burroughs to be carefuller in electing the diſcreeteſt, ableſt, fitteſt and moſt laborious perſons, who would ſpeedieſt and beſt diſpatch all Public buſineſs, which occaſioned the ſhortneſs of Seſſions. Fourthly, It begat a greater confidence, correſpondence and dependance betwixt the Electors and Elected. Fifthly, It kept poor petty Burroughs (unable to defray the Expences of their Burgeſſes) from electing or ſending Members to our Parliaments, and oblig'd ſome to Petition to be eaſed of the Charge; whereby the number of Burgeſſes was ſcarce half ſo many, and Parliaments were more expeditious in Councils, Aids, Motions and their Acts and Debates, and ſo the Seſſions were much ſhortned, the Elections were then fairer, and for the moſt part unqueſtionable, the Commons Houſe leſs unwieldy, Privileges of Parliament leſs enlarged beyond the ancient Standard, abuſes in Elections, Returns and Conteſts about them (by reaſon of the Mercenary and Precarious Voices) leſs troubleſom: whereas now in every new Parliament a great part of the time is ſpent in the regulating Elections. But Mr. *Prynne* hints little upon one great cauſe of that uſage, which was that in Burroughs as well as Cities, moſtwhat the perſons elected were the Inhabitants in the Cities and Burroughs, Merchants, Tradeſmen, or the moſt popular Burghers; as will appear to whoever peruſeth the Chronological Catalogue Mr. *Prynne* (*s*) with no ſmall pains hath collected into his Fourth Part of his Brief Regiſter, where I believe one can pitch upon no City or Burrough from the time of *Ed.* 1. to the 12 *Ed.* 4. but he will find by the very names, that they were ſuch as I have mentioned. I am well aſſured of it for *Yorkſhire*, and particularly for the City of *York*, they being generally ſuch as we find in the Liſt of their Mayors.

(*s*) *P.* 900. *to* 1072.

Beverly hath Four of the Sirnames of good Families, and *Kingſtone* upon *Hull* hath (*t*) *William a S. Pole*, from whom the great Family of *Suffolk* ſprung, but it is well known he was a Merchant there.

(*t*) 8 *E.* 3.

Why wages not now paid to Knights, Citizens, and Burgeſſes.

Now ſince every part of the Country abounds with Gentlemen of Plentiful Fortunes, Generous Education, ſuch as are verſed in Affairs of their Country, as Juſtices of the Peace, Deputy Lieutenants, and have been Sheriffs, Members of Parliament, and born Publick Offices; there can be no expectation or Fear, that thoſe that are Candidates for Parliament Men for Burroughs, will expect any Sallary or Reward, ſo long as they chuſe them. There being generally Competitors, who inſtead of expecting Wages, are generally obliged now to vaſt expences to purchaſe the Votes of the Electors; ſo that now the Honourable Houſe of Commons is quite another thing, than what it was wont to be in elder Ages, when they were

were ſummoned principally to give Aſſent to what the King and the Lords did, to aſſent to Aids, and Taxes, and apportion their own Taxes, bring up their Petitions concerning Grievances to be redreſſed by the King and his Council, or the King and Lords, and draw up Impeachments againſt great Offenders, and ſuch like.

Having thus conſidered the Writs of Summons to the Members of the Houſe of Commons before *Henry* the Seventh's time in all its branches, I ſhall give a Tranſcript of the Writ of Summons uſed at this day; whereby may be ſeen how much of the old form is continued, which I ſhall inſert in Latin and Engliſh, that the Emphaſis of the Original may not be loſt.

Copy of VVrits of Summons now uſed to the Sheriffs.

REX Vicecomiti Salutem, &c. *Quia de adviſamento, & aſſenſu Concilii noſtri, pro quibuſdam arduis & urgentibus negotiis, nos, ſtatum & defenſionem Regni noſtri* Angliæ, *& Eccleſiæ Anglicanæ, concernentibus; quoddam Parliamentum noſtrum apud*, &c. *die*, &c. *proxime futuro, teneri ordinavimus; & ibidem cum Prælatis, Magnatibus & Proceribus dicti Regni noſtri colloquium habere & tractatum. Tibi præcipimus, firmiter injungentes, quod facta Proclamatione in proximo Comitatu tuo poſt receptionem hujus Brevis noſtri, tenendo die & loco prædicto, duos Milites gladiis cinctos, magis idoneos, & diſcretos Comitatus prædicti, & de qualibet Civitate Comitatus illius, duos Cives, & de quolibet Burgo duos Burgenſes, de diſcretioribus & magis ſufficientibus, libere & indifferenter per illos qui Proclamationi hujuſmodi interfuerint, juxta formam Statutorum inde editorum & proviſorum eligi, & nomina eorundem Militum, Civium, & Burgenſium,*

THE King to the Sheriff, Greeting. Whereas by the Advice and Conſent of our Council, for certain difficult and urgent buſineſs concerning us and the State and defence of our Kingdom of *England*, and the Engliſh Church, we have ordained a certain Parliament of ours to be held at our City of, *&c.* the day, *&c.* next enſuing, and there to have conference, and to treat with the Prelates, Great Men, and Peers of our ſaid Kingdom. We command and ſtraitly enjoyn you, that making Proclamation at the next County Court after receipt of this our Writ, to be holden the day and place aforeſaid; you cauſe two Knights girt with Swords, the moſt fit and diſcreet of the County aforeſaid; and of every City of that County two Citizens; and of every Burrough, two Burgeſſes of the diſcreeter, and moſt ſufficient, to be freely and indifferently choſen by them who ſhall be preſent at ſuch Proclamation according to the tenure of the Statutes in that caſe made and provided, and the names of the ſaid Knights, Citizens and Burgeſſes ſo choſen, to be in-

Advice of Privy Council.

Conference with Prelates, *&c.*

Proclamation at County-Court.

Two Knights girt with Swords, *&c.*

Two Citizens.

Two Burgeſſes.

Indifferently choſen by thoſe preſent at the Proclamation, according to Statutes.

Their Names inſerted in Indentures betwixt the Sheriff and the Electors.

ſic electorum, in quibuſdam Indenturis inter te & illos qui hujuſmodi Electioni interfuerint, inde conficiendis, ſive hujuſmodi electi præſentes fuerint, vel abſentes, inſeri; eoſque ad dictum diem & locum venire facias; ita quod iidem Milites, plenam & ſufficientem poteſtatem pro ſe, & Communitate Comitatus prædicti; Cives & Burgenſes pro ſe, & Communitate Civitatum & Burgorum prædictorum, diviſim ab ipſis habeant, ad faciendum & conſentiendum his quæ tunc ibidem de communi Concilio dicti Regni noſtri (favente Deo) contigerint ordinari, ſuper negotiis ante dictis: Ita quod pro defectu poteſtatis hujuſmodi, ſeu propter improvidam Electionem Militum, Civium aut Burgenſium prædictorum, dicta negotia infecta non remaneant quovis modo. Nolumus autem quod tu nec aliquis alius Vicecomes dicti Regni noſtri aliqualiter ſit electus. Et Electionem illam in pleno Comitatu factam diſtincte & aperte ſub Sigillo tuo & Sigillis eorum qui Electioni illæ interfuerint, nobis in Cancellariam noſtram ad dictum diem & locum certifices, indilate remittens nobis alteram partem Indenturarum prædictarum præſentibus conſutam una cum hoc Brevi. Teſte meipſo apud Weſtmonaſt——

To cauſe them to come at the Day and Place.

The Knights from the County, the Citizens and Burgeſſes from their Cities & Burroughs, to have full Power to do and conſent.

Left for want of that Power, or improvident Election, the Buſineſs be undone.

No Sheriff to be choſen.

Election to be in full County.

The Indentures to be ſealed by the Sheriff and Electors.

A Counterpart tacked to the VVrit, returned into the Chancery.

ſerted in certain Indentures, to be then made between you and thoſe that ſhall be preſent at ſuch Election, whether the parties ſo elected be preſent or abſent; and ſhall make them to come at the ſaid day and place; ſo that the ſaid Knights for themſelves, and for the County aforeſaid, and the ſaid Citizens and Burgeſſes for themſelves and the Commonalty of the aforeſaid Cities and Burroughs, may have ſeverally for them full and ſufficient power to perform and to conſent to thoſe things which (by the favour of God) ſhall there happen to be ordained by the Common Council of our ſaid Kingdom concerning the buſineſſes aforeſaid; ſo that the buſineſs may not by any means remain undone for want of ſuch power, or by reaſon of the improvident Election of the aforeſaid Knights, Citizens and Burgeſſes. But we will not in any caſe, you or any other Sheriff of our ſaid Kingdom ſhall be elected. And at the day and the place aforeſaid the ſaid Election made in the full County Court, you ſhall certify without delay to us in our *Chancery*, under your Seal, and the Seals of them which ſhall be preſent at that Election, ſending back unto us the other part of the Indenture aforeſaid, affiled to theſe Preſents, together with this Writ. Witneſs our ſelf at *Weſtminſter*----

SECT.

SECT. 7.

Concerning the Speaker, and the Privileges of the Houſe of Commons.

My Deſign not to controvert the Privileges of the Houſe of Commons, but to ſhew the gradual Alterations.

IT is not my deſign to treat of all things relating to the Conſtitution, Laws, and Cuſtoms of the Houſe of Commons: there are ſeveral uſeful Books extant which are fit for the Honourable Members of the Houſe, to conſult. What I moſt aim at, is to ſhew what the Ancient Uſage hath been, and how from time to time things have been refined to the Mode and State they are now in: and I hope thoſe great Spirits that honour their Countries with their Service, will pardon one that deſigns nothing more than to give them a Profile of the whole Model, both in the days of our remoteſt Anceſtors, and what it was in more Modern times, under juſt and undoubted Soveraigns; as alſo how much it was transformed when the pretended Houſe of Commons being confederated with a ſucceſsful Army, murthered their Soveraign, voted away the Houſe of Lords, and aſſumed the Title of the Supream Authority of the Nation; of which laſt I ſhall treat in the next Chapter.

The Solemnity at the Opening of the Parliament.

The Members being according to the Kings Command come to the place appointed; ſometimes the Soveraign with the Lords in their Robes have rid in State to the Parliament, which is generally yet obſerved in *Scotland* and *Ireland*. However at the opening of the Parliament the King is ſeated on his Throne under the Canopy with his Royal Crown on his Head, the Chancellor ſtanding ſomething backward on his Right-hand, and the great Officers, as Lord Treaſurer, Lord Preſident of the Kings Council, Lord Privy Seal, Great Chamberlain, the Lord Conſtable, Marſhal, Lord Admiral, Lord Steward and Kings Chamberlain attend on either ſide the State, or in their Seats with the Enſigns of their Offices, ſome of the Nobles being appointed to carry the Sword and the Cap of Maintenance. Three great Gilt Maces are carried, and all the Heralds attend in their Cloth of Gold Coats. The two Archbiſhops, and Biſhops in their Robes ſit upon Benches next the Wall on the Right-hand, and the reſt of the Great Officers that ſtand not by the State, and all the Nobility in order upon the Bench on the Left-hand, or on the Forms that ſtand in the middle, where alſo ſit the Judges, Maſter of the Rolls, Secretaries of State, twelve Maſters of Chancery, Atturney General, Solicitor General, and Clerk of the Crown, and the other Clerks Aſſiſtants; which it is not my buſineſs exactly to deſcribe.

See for this more fully, *Elſyng*'s Method of holding Parliaments, *p.* 86.

Leave given to the Commons to chuſe their Speaker.

The King being Seated, when it's his pleaſure, the Houſe of Commons are ſent for, who ſtanding bare at the Lords Bar, attend the King's Speech, and the Chancellor's; and then have leave to chuſe their Speaker, whom commonly ſome of

the Members of the Houſe that are of the King's Privy-Coun-
(u) *Hacket wel, p.* 127. cil, propoſe; and if any one oppoſe it, (*u*) he is to name another. But I ſhall refer the curious to Mr. *Elſyng*, and others that treat of this at large.

(w) 4. *Inſtit. p.* 8. Sir *Edward Coke* (*w*) ſaith, That though the Commons are to chuſe their Speaker, yet ſeeing that after their choice, the King may refuſe him, for avoiding expence of time, and conteſtating about it, the uſe is (as in the *Conge de eſlier* of a Biſhop) that the King (by ſome of his Privy-Council) (as in this preſent Parliament was done by the Earl of *Middleton*, one of his Majeſty's Principal Secretaries) doth name a diſcreet and learned Man, whom the Commons elect; for without their Election no Speaker can be appointed for them, becauſe he is their Mouth, and truſted by them, and ſo neceſſary, as the Houſe of Commons cannot ſit without him: So that if he be totally diſabled by grievous Sickneſs, another muſt be choſen in his place, as he inſtanceth in Sir *John Cheney*, 1 *H.* 4. and Sir *John Tirrel*, 15 *H.* 6. But whereas (*x*) he affirms, that in antient time the two Houſes ſate together, and the ſureſt mark of the time of the diviſion of them was, when the Houſe of Commons had a continual Speaker: Mr. *Prynne* (*y*) in his Animadverſions hath made the contrary very clear by ſeveral Records, wherein it's expreſly ſaid, they conſulted apart; as particularly in 6 *E.* 3. (*z*) at *York*, the Prelates, Earls, Barons, and great Men by themſelves, and the Knights of the Counties, and the People of the Commons by themſelves, treated of the Buſineſs propounded to them. Another (*a*) ſaith, That if Sir *Edward* means the Lords and Commons did ſit and vote together in one Body, few will believe it; becauſe the Commons never were wont to loſe, or forgo any of their Liberties or Priviledges: and for them to ſtand now bare, where they were uſed to ſit and vote, (upon this Suppoſal) is an alteration not imaginable to be indured by them: and when we conſider the ſole Power of Judicature in the Lords, and who the Burgeſſes were in old times, it ſtill makes it more improbable, and it is to me a very remarkable thing, that neither in Hiſtory or Record, any thing is to be found that will clear this doubt. However it is certain that (*b*) 50, and 51 *E.* 3. the Commons had a Speaker, and Sir *Edward Coke* (*c*) ſaith, that the accuſtomed (*d*) place of that thrice worthy Aſſembly of the Knights, Citizens and Burgeſſes of Parliament (when held in *Weſtminſter*) was in the Chapter-houſe of the Abbat of *Weſtminſter*, and it continued ſo till the Statute of 1 *Ed.* 6. *c.* 14. which gave the King Colleges, free Chappels, *&c.* whereby the King enjoyed the beautiful free Chappel of St. *Stephen*, founded by King *Stephen*, (which had Lands and Revenues of the old yearly value of 1089 Pound, ten Shillings five Pence) ſince which time the Chappel thereof hath ſerved for the Houſe of Commons, when Parliaments have been held at *Weſtminſter*.

Whether the two Houſes ſate together.

(x) 4. *Inſtit. c.* 1. *ſect.* 2.

(y) *P.* 8, 9.

(z) *Et les Chivalers des Countez, & Gents du Communs, par eux meſmes.* Rot. Parl. 6 E. 3. num. 6.

(a) Freeholders Grand Inqueſt, *p.* 19.

(b) *Rot. Parl.* 50 *E.* 3. *num.* 8.

(c) *Coke Inſtit.* 4. *p.* 255.

(d) Ancient Place, ſaith *Elſyng*, *p.* 84.

As

As Sir *Edward Coke* (becauſe he believed the two Houſes ſate together) will not allow them to have had a Speaker before 50 *E.* 3. ſo on the other hand Mr. (*e*) *Elſyng* ſaith, That the Commons ever had a Speaker, none will doubt, for their Conſultation apart from the Lords; though, he thinks, they often met, and did ſit together in one Room, and then a Speaker was neceſſary to avoid Confuſion of Speech and Argument. But he brings no better Argument for it (*f*) than that *Petrus de Mountfort*, (*g*) 44 *H.* 3. ſigned the Letter to Pope *Alexander*, touching the recalling of *Adomar* elect Biſhop of *Wincheſter* from Baniſhment: Wherein they ſay, if the King, and the *Regni Majores hoc volent, Communitas tamen ipſius, in Angliam jam nullatenus ſuſtineret*: and this was ſealed by all the Lords, and by *Peter de Mountford vice totius Communitatis*; which, he ſaith, ſheweth plainly they had a Speaker.

(*e*) *Id. p.* 123.

(*f*) *Lib. Sti. Albani Bibl. Cotton. fol.*207.

(*g*) It ſhould be 42 *H.* 3. That *Peter Mountfort* was not Speake. of the Common-Houſe.

In anſwer to which, I ſuppoſe it a great miſtake to ſay that *Petrus de Mountfort* ſigned the Letter *vice Communitatis* (which either ignorantly, or willfully, is Printed in Mr. *Elſyng*, *Comitatus*) for (*h*) *Matthew Paris*, who relates the whole Story, ſaith it was ſigned by ten Perſons, who were all great Barons, *vice totius Communitatis*, and the Preface of the Letter ſhews it was *Communitas Comitum, Procerum, Magnatum, aliorumq; Regni Angliæ*: and this *aliorum* can mean only the *Milites*, which held by Military Service of the great Barons, and the leſſer Tenents *in Capite*, which were no Repreſentatives of the Commons, as our Knights, Citizens, and Burgeſſes at this day are; and the Inſcription of the Popes Letter ſhews, who he underſtood this *Communitas* to be, when he ſuperſcribes it *dilectis Filiis Nobilibus viris, Conſiliariis clariſſimi in Chriſto Filii noſtri illuſtris Regis Angliæ, ac cæteris Proceribus & Magnatibus Regni Angliæ.*

(*h*) *Additament. Math. Paris*, 1132, 1133. *Anno Dom.* 1258. 42 *H.* 3. *ult. Edit.*

Now the Perſons that ſubſcribed this, are thus ranked by *Matthew Paris*, *R. de Clare, Glovernia & Herefordia, S. de Monteforti Legria, E. Bigod Mareſcallus Angliæ, H. de Bohun Hertfordiæ, & Eſſex, W. Albemarle, J. de Placeto Warewici Comitis, H. Bigod Juſticiarius Angliæ, P. de Sabaudia, J. Filius Galfridi, Jacobus de Audel, & Petrus de Monteforti, vice totius Communitatis præſentibus Literis ſigilla noſtra appoſuimus in Teſtimonium prædictorum.* So that it is plain it was not *Peter de Montefort* that ſigned *vice Communitatis*, but they all did it, and he was a great Baron himſelf, the Head of whoſe Barony was *Beldeſent* Caſtle in *Warwickſhire.*

Concerning the Commons firſt ſummoning to Parliament.

I think it not amiſs here to offer my Opinion concerning this Queſtion, and the great Controverſie betwixt Dr. *Brady* and Mr. *Petyt*, and thoſe that are ſo earneſt to find the Commons ſummoned to Parliament before the 49 *H.* 3. before King *John* granted his Charter (wherein he grants that he will cauſe to be ſummoned the Archbiſhops, Biſhops, Abbats, Earls and greater Barons of his Kingdom ſingly by his Letters, and beſides (*i*) will cauſe to be ſummoned in general by his Sheriffs

(*i*) *Et præterea faciemus ſubmoneri in generali per Vicecomites & Ballivos noſtros, omnes alios qui in Capite tenent de nobis.* Matt. Paris fol. 216. Edit. ult. num. 20.

Sheriffs, and Bayliffs, all others which hold of him *in Capite* at a certain day) there is no doubt but the Tenents *in Capite* (such of them at least as were eminent for Parts, or as the King pleased) were summoned to the great Councils; and it being in that Charter said, that the cause of the Meeting should be expressed in the Summons, and that Forty days warning should be given; and in the same Charter, that the City of *London* should have all its ancient Liberties and free Customs, and that all other Cities, Burghs and Villa's (which was of the same import as a Free Burrough, as we find in *Pontefract*, which is always stiled *Villa*, and the Inhabitants *Burgenses*, who held a certain Land called *Burgage* Land) and the Barons of the Cinque Ports, and all the Ports should have all their Liberties and their Free Customs, *& ad habendum commune concilium Regni de Auxiliis, &c.* that is as I suppose, to have some of their Members at the great Councils, where Aids were to be granted to the King, other ways than in three cases before excepted, that is, to redeem the Kings body, to make his Eldest Son a Knight, and to marry once his Eldest Daughter; excepting which three Particulars (reserved before) in his Charter, he had granted that no Scutage nor Aid should be laid on his Kingdom unless by the Common Council of his Kingdom.

The Tenents *in Capite* in stead of the Representative Commons, as now.

Some summoned from Cities and Burroughs before King *John*'s time, but not as our Citizens and Burgesses now, by Representation.

From whence I think may be inferred, that such Cities, Burroughs and Villa's, which held *in Capite*, or the Lord that was principal owner of them, by his *Præpositus Ballivus*, or some that held immediately under him, and so some for the *Dominicæ Civitates & Burgi Regis*, might be summoned, with the lesser Barons, or the other Tenents *in Capite*. But this doth not prove them to come by way of Representatives, nor that they had any more Power than the Knights, Citizens, and Burgesses had in after-times, which (as I have made it apparent by the several expressions in the Summons) was only to hear, and assent to what the King and *Magnates* ordained.

Since there are now extant no Summons in King *John*'s time, or before the 49 *H.* 3. (except some few that are about the Tenents *in Capite* aiding the King in his Wars) the subsequent Practices are the best Expounders of ancient Usages.

Upon the whole I do judge, that before King *John*'s Charter, there were many of the Tenents *in Capite* summoned to the great Councils, but so as the King had his liberty to summon whom he pleased; and that some from Cities, Burghs, Villa's and other Ports did come to the great Council, but still at the Kings pleasure, and that in *King John*'s time, the body of the Kingdom siding with the Lords (that so often rebelled against him) the Lords thinking to make their Party stronger, got the Clause for other Tenents *in Capite* to be summoned by general Summons.

After King *John*'s Charter, the Tenents *in Capite* so numerous, as might be reputed an House of Commons.

Now whatever number were convened, before King *John*'s Charter, this general Summons must greatly encrease the House of Commons, as I may call it; and there needs no such strife about

about the want of Freemen in these Councils; for after this Charter all who were properly Freemen, were capable, the other were generally Tenents to them, and Homagers, (which was a Tenure that though it might free their Persons, yet their Lands were obnoxious to forfeiture upon every breach of Homage; and their Lords had the power of taxing them) so that in some sense they were their Tenents Representatives: and as long as they were Freeholders themselves, and were a more numerous body (if they all appeared, as for any thing I see they might do, if not hindred by Impotence, Nonage, or the Kings service) they far exceeded the number of Representatives in the Reigns of King *H.* 3. *E.* 1. and *E.* 2. So that it amounts to the same thing, as to the general Freedom of the Nation, when all these were Members of the Great Councils, whether the common Freeholder were represented or not, as now (which Dr. *Brady* hath so nervously confuted every where in his Introduction, that they were not) that I think the Freedom Mr. *Petyt*, Mr. *Pen*, and others make so great a coyl about, no ways impaired by Dr. *Brady*; who like a judicious Person, would have us use propriety of Speech, and rather be thankful for the Freedom we now enjoy, and our Ancestors have from time to time obtained, by the grant of Kings, than to make such Claims to native Freedoms and Liberties (as Mr. *Pen* would have it, that our Ancestors contended for) as if their Ancestors had enjoyed them before we had any Kings, and stipulated with their Kings for them, before they admitted them to Soveraignty; which no considering person that will impartially read ancient History, either of our Country or others, can find any certain footsteps of.

Who properly Freeholders in K. *John*'s time.

To return now to the business (which the foregoing observation gives some light to) I conceive as the Thegns (the Kings *Prepositi* and *Reeves*, by reason of their Imployments about the Kings Demesn Lands, governing of Burroughs, Stewards of Hundreds, Wapentakes, and men employed in other civil Affairs of the Kingdom) did meet in the *Saxon* Councils: so from Cities and Burroughs, where great Lords had Fees (as most, if not all of them may be easily proved to have been held immediately of the King, or of some of the very great Barons) there might come before King *John*'s time, some Members to the great Council, being in the Charter, to my judgment, reckoned as one of their Franchises, or rather something exceeding their municipal Liberties and Free Customs, being coupled to them with an *and to have a Priviledge to have some of them Members of the great Council of the Kingdom*; for so I think the words *& ad habendum commune Concilium Regni de Auxiliis* must be understood: But then when it is restricted there with *de Auxiliis* only; it may very well give a ground to their opinion that think the principal use was to proportion the Aid or Tax, and assent to what the King, the Bishops, Abbats, Priors, Earls, Barons and Peers did ordain.

As the *Thegns* in the *Saxon*-times, so the *Præpositi*, Reeves, *&c.* of Burroughs after.

What the Tenents *in Capite* were summoned for.

However

That such great Numbers sate not with the Lords.

However this was, it seems clear to me, that this numerous body of so different an Order from the *Barones majores*, must have a distinct Place for consulting apart, and must select Committees to transact with the King and Lords, and must for order sake appoint some to speak for them, what they petitioned for or assented to, and could not constantly sit with the Prelates and Lords; and do rather believe that the Prelates had one place where they sate, and the Barons another, and these Tenents *in Capite* a third, at least for their usual Consultations among their own Order, and met in the public place when there was occasion, or might have access by Committees: which certainly was the practice in after-times, as appears in that Parliament of 6 *E.* 3. (*k*) the morrow after the Nativity of our Lady, the King requiring the advice of his Parliament, touching his *French* Affairs, and Voyage thither. It is said they thereupon treated and deliberated, that is to say, the Prelates by themselves, and the said Earls, Barons and other great men by themselves, and also the Knights of the Counties by themselves, and then gave their advice. From whence by the way we may observe the true ground of calling our Parliament Houses, without the King, the three Estates.

(*k*) *Rot. Parl.* 6 *E.* 3. *num.* 2. *Ceſt aſſavoir, les Prelatz par eux meſmes, & les ditz Countes, Barouns, & autres Grantz, par eux meſmes, & auxint les Chivalers des Countes par eux meſmes.*

No mention of Citizens or Burgesses.

Having dispatched this, I come now to consider the Speakers of the House of Commons. *Hackwel* (*l*) and *Elsyng* name the first that is found upon Record, to be Sir *William Trussel* 13 *E.* 3. *Num.* 9. where it is said, *Les Chivalers des Countes & les Commons responderent per Monsieur William Trussel*, but the Record names him not Speaker, however he performed that Office then. *Hackwel* names *Scroope* before him 6 *E.* 3. and Sir *Peter de la Mare* after him; but the first that Mr. *Elsyng* or Mr. *Prynne* (*m*) finds upon Record, and by the name of Speaker, is Sir *Thomas Hungerford*, 51 *E.* 3. for it is said that the last day of the Parliament, he declared, that during the Parliament he had generally moved the King to pardon all such as were in the last Parliament unjustly convicted: which imports that this was a Petition of the Commons, presented by him their Speaker.

(*l*) *Modus tenendi*, *p.* 200. Method of Parl. 124.

The first Speaker upon Record.

(*m*) *Prynne*'s Abridgment, *p.* 151.

Anno 1 *R.* 2. Sir *Peter de la Mare*, being Speaker, made his Protestation, that what he had to say, was from the whole House, therefore required if he should speak any thing haply without their consents, that the same ought to be amended before his departure from the said place.

The first Petition we meet with, that a Speaker (*n*) made to the King from the Commons, was 2 *R.* 2. by Sir *James Pickering* their Speaker, that if he should speak any thing that haply might be ill taken, it might be as nothing, so as the Commons might at any time amend the same, and the like he petitioned for himself: which is the first Petition as to Liberty of Speech, we meet with.

(*n*) Abridgment of Records, *p.* 174. Petition for Freedom of Speech.

The first Speaker presented to the King in full (*o*) Parliament by the Commons, 20 *Ric.* 2. was Sir *John Bushey* the King's great Favourite. In this Parliament the Houses sate together in

(*o*) *Id. p.* 360.

in a long (*p*) Houſe built of Timber in the Palace-Yard, at the Impeachment of the Duke of *Glouceſter*, the Earls of *Arundel* and *Warwick*. Sir *Arnold Savage* was Speaker, 2 *H.* 4. who is the firſt upon Record that the Commons were required by the King to chuſe as Speaker; and he was again in 5 *H.* 4. who deſired the King in the name of the Commons, that they might freely make complaint of any thing amiſs in Government; which was yielded to by the King.

(*p*) *Hackwel Modus* p. 202.

Anno 7 *H.* 4. Sir *John Tiptoſt* was choſen Speaker, who deſired to be diſcharged, becauſe of his Youth; but he was allowed: he forgot to make the uſual Proteſtation, but came up the next day, and made it with this Addition, (*q*) That if any Writing were delivered by the Commons in this Parliament, and they ſhould deſire to have it again to amend any thing therein, it might be reſtored to them; which was granted. While he was Speaker, he Signed and Sealed the Deeds of the entailing of the Crown on *H.* 4. (*r*) with theſe words, *Nomine totius Communitatis*. He was a Perſon of extraordinary Parts, Son of *John* Lord *Tiptoſt*, and for all the Apology for his young Age, he was within three Years after made Lord Treaſurer of *England*, and by *H.* 6. made Marqueſs of *Worceſter*.

(*g*) *Rot. Parl.* 7 *H.* 4. *num.* 6.

(*r*) 7 *H.* 4.

Anno 1 *H.* 5. *William Sturton* Eſquire, was choſen Speaker, who without the aſſent of his Companions, did agree before the King to deliver in Parliament certain Articles; but three days after the Commons ſent Sir *John Doreword* (*r*) with ſeveral of their Members to the Houſe of Lords, to declare to the King, that their Speaker had no Authority from them to yield thereto, and the King was pleaſed to accept of it.

There are three Petitions the approved Speaker makes to the King: Firſt, That the Commons may have freedom of Speech, as of (*s*) right and cuſtom they have had, and all their ancient and juſt Privileges and Liberties allowed them. In Sir *Thomas Moor*'s Speech 14 *H.* 8. it was thus worded, That if in communication and reaſoning, any man in the Commons Houſe, ſhould ſpeak more largely than of duty they ought to do, that all ſuch offences ſhould be pardoned, and to be entred upon Record; which was granted: only I find that *H.* 4. (*t*) ſaid that he hoped, or doubted not, that the Members of Parliament would not ſpeak any unfitting thing, or abuſe this Freedom and Privilege.

(*s*) 25 *H.* 1. *num.* 10. The Speakers of latter Times expreſs the particular Privilege of Freedom from Arreſt.

(*t*) *Rot. Parl. H.* 4. *num.* 10.

The ſecond is, That if he ſhall commit any Error in any thing he ſhall deliver in the name of the Commons, no fault may be imputed to the Commons, and that he may reſort again to them, for Declaration of his good Intent, and that his Error may be pardoned. The third is, That as often as neceſſity for his Majeſties Service, and the good of the Common-wealth ſhall require, he may by direction of the Houſe of Commons have acceſs to His Majeſty.

Sir *Tho. Smith* ſaith, The Speaker uſed to add a Promiſe in the Commons Names, That they ſhall not abuſe theſe Privileges, but have ſuch regard, as moſt faithful, true, and loving Subjects ought to have to their Prince. *Commonwealth*, p. 41.

SECT. 8.

Of Priviledges of the Houſe of Commons concerning Liberty of Speech.

HAving thus brought this Honourable Aſſembly together, and their Speaker placed in his Chair, I ſhall touch ſomething of their Privileges, which ſince the days of Sir *Edward Coke*, and much by his Influence, have been enlarged beyond what was uſed in antient times. I ſhall begin with that of Freedom of Speech in their Debates.

Why Liberty of Speech neceſſary to be allowed.

It cannot be conceived in ſo great a Body as the Houſe of Commons, that what is propoſed by one, and ſeconded by others, ſhall not admit of Debate: Though all may aim at the ſame end, the good of the King and People; yet they may differ in the ways and methods of attaining it, and whoever would ſtraighten a crooked Rod, muſt bend it as far on the contrary ſide. I doubt not but the *nemine contradicente* was put into the Printed Votes, when Mr. *Williams* had the Chair, rather *ad faciendum populum*, than that there was ſuch an Harmonious Concurrence, as then was blazed abroad.

(u) *Stat.* 4 *H.* 8. *c.* 8. *Strowde's* Caſe.

Anno 4 (u) *H.* 8. An Act was made concerning *Richard Strowde*, Eſquire, which declareth that all Suits, Accuſements, Condemnations, *&c.* to be put or had upon any Member of that or ſucceeding Parliaments, for any Bill, ſpeaking, reaſoning, or declaring of any matter or matters concerning the Parliament, to be communed or treated of, be utterly void and of none effect. This by (w) the Lords, 11 *Decemb.* 1667. was declared a declaratory Law of the antient and neceſſary Rights and Priviledges of Parliament, and ſo the Judgment againſt *Denzil*, late Lord *Hollis*, was nulled, and againſt others in King *Charles* the Firſt's time.

(w) Lords Journal.

Yet it is manifeſt that Queen *Elizabeth* in two Caſes ſhewed how far, even motions in Parliament, contrary to her Laws, Prerogative, and Pleaſure expreſſed, were to be treated. The (x) firſt was a motion by Mr. *Paul Wentworth*, 23 *Eliz.* for a publick ſet Faſt, and for a Preaching every Morning at Seven of the Clock, before the Houſe ſate, and the Preachers to be appointed by the Privy-Council that were of the Houſe; but the Queen ſent them a Meſſage by the Vice-Chamberlain, that ſhe had in great admiration, the raſhneſs of the Houſe, in committing ſuch an apparent contempt of her expreſs Command, and to put in Execution ſuch an Innovation, without her Privity and Pleaſure firſt known; ſo that by Mr. Vice-Chamberlain they ſent their Submiſſion to her. *Anno* 35 *Eliz.* Mr. *Peter Wentworth*, and Sir *Henry Bromley* delivered a Petition to the Lord-Keeper, deſiring the Lords of the upper Houſe to be ſuppliants with them of the lower Houſe to her Majeſty, for entailing the Succeſſion of the Crown, whereof a Bill was ready drawn

(x) *Prynne's* Plea for the Lords. Sir *Sym. D' Ewe's* Journal.

How Queen *Elizabeth* curbed and puniſhed thoſe that made Motions in the Houſe contrary to her Prohibitions, in Mr. *Paul* and Mr. *Pet. Wentworth's* Caſe.

drawn by them. The Queen was highly diſpleaſed, as being againſt her expreſs Order, and charged the Lords of her Council to call the parties before them, and Mr. *Wentworth* was by them committed to the Tower, and others, with Sir *Hen. Bromley* to the Fleet; the Parliament then ſitting: and when Mr. *Wroth* moved, That the Houſe might be humble Suitors to the Queen for their Liberty; it was anſwered by the Privy Counſellors in the Houſe, that the cauſes of Commitment were beſt known to her ſelf, and the Houſe muſt not call the Queen to account for what ſhe doth of her Royal Authority; for her Majeſty liked no ſuch Queſtions, neither did it become the Houſe to ſearch into thoſe matters. So Mr. *Morrice* Attorney of the Court of Wards, was taken out of the Houſe, *Feb.* 28. and committed to Priſon, for delivering in a Bill againſt the abuſes of the Biſhops; the Queen ſending for Sir *Edward Coke* then Speaker, and charging him upon his Allegeance, if any ſuch Bill were exhibited, not to read it.

In Mr. *Morrice's* Caſe.

At another time, long before this, ſhe told the Speaker, and the body of the Houſe of Commons, moving her to Marriage, That if it had been with limitation of place, or perſon, ſhe muſt needs have miſliked it, and thought it a great preſumption in thoſe to take it upon them to bind and limit, whoſe duty it was to Obey.

King *Charles* the Firſt was very infortunate to have ſo many Firebrands in ſome, if not all, of his Parliaments; which if the reſt of the Houſes had been pleaſed to have extinguiſhed by timely and nipping reprehenſions, we had never ſeen the Government of Church and State ſo reduced into Aſhes, that there was nothing remained of the beautiful Pile. In ſome of his Speeches he calls thoſe evil Members, *Vipers*; but it was his misfortune to anger and exaſperate them rather than ſuppreſs them; ſo that at laſt, they ſtung him to Death. It is a very ill condition, when a Prince hath ſuch Wolves by the Ears, that he is in danger whether he hold them or let them go. The Attacque upon the five Members, and letting fall the purſuit, was one of the falſe thruſts that left him unguarded.

Liberty of Speech in King *Charles* the Firſt's time abuſed.

In the Cloſe of one of the Parliaments of Queen *Elizabeth*, the (*y*) Chancellor tells them, There be certain of the Houſe of Commons (though not many) who have ſhewed themſelves Audacious, Arrogant and Preſumptuous, calling her Majeſties Grants, and Prerogatives into queſtion, contrary to the expreſs admonition given in her Majeſties name in the beginning of the Parliament, which it might very well have become them to have regard to; but her Majeſty ſaith, That ſeeing they thus willfully forget themſelves, they are otherwiſe to be remembred.

(*y*) MS. Speeches, 13 *Eliz.* 1571. Queen *Elizabeth's* Reprehenſion of ſome Members, for moving things ſhe had forbid.

Indeed there ſeems good reaſon, that ſuch, who make advantage of their being Members of Parliament, to ſow their Seditious Diſcourſes; and under the Protection of being Members, take the boldneſs to calumniate the Government, and

raiſe Jealouſies betwixt the King and his People, to alienate their Affections, and Allegeance from him, after the expiration of their Protection (if the Houſe will not call them to an account) ſhould not only loſe the Favour of their Prince, but ſhould be puniſhed for Sedition as far as by Law is allowed, as well as they are liable to other proceedings in Law.

It becomes therefore all lovers of the excellent Conſtitution of Parliaments to be very wary in this point, leſt, as Mr. Juſtice *Hutton* ſaid in another Caſe, Things being carried diſaſtrouſly by ſome Members Ambition, may bring ſuch a diſtaſt againſt the courſe of Parliaments, as we, and all that love the Commonwealth, have juſt cauſe to be ſorry for it.

SECT. 9.

Of the Privilege from Arreſts.

ALthough the Speakers formerly petitioned only, That all their Ancient, and Juſt Privileges, and Liberties be allowed them; yet we (z) find that Sir *Tho. Gargrave*, Sir *Tho. Richardſon*, Sir *Thomas Crew*, Sir *Heneage Finch*, and all later Speakers have expreſſed this Privilege particularly, that for better attending the Publick and Importunate Service of the Houſe, themſelves, and their neceſſary Attendants, may be free both in Perſon and Goods from all Arreſts and trouble, according to our Ancient Priviledges and Immunities, which Sir *Tho. Gargrave* 1 *Eliz.* is ſaid firſt to make the firſt of any.

(z) *Hackwell. Catal.* 213, 215. *Elſyng, p.* 137, 138. This Privilege petitioned for by the Speaker.

This indeed is one of the ancienteſt Privileges the Houſe of Commons may claim, and Mr. *Prynne* labours to prove it the only Privilege properly ſo to be called, and Sir *Edward Coke* mentions no other.

(a) 4. *Inſtit. p.* 24.

The firſt thing that appears upon Record, is, the Petition of (b) the Maſter of the Temple, in which he deſires, *Quod habeat licentiam diſtringendi tempore Parliamenti*; to which the King anſwers thus, *Non videtur honeſtum quod Rex concedat quod illi de Concilio ſuo diſtringantur tempore Parliamenti, ſet alio tempore diſtringat per hoſtia & feneſtras, ut moris eſt*; that is, The Maſter petitions, that he may have power to diſtrein for Rent in time of Parliament; to which the King anſwers, That it ſeems not honeſt, that the King ſhould grant, that they of his Council ſhould be diſtrained in time of Parliament, but that he may diſtrain at another time by the Door and Windows, as the Cuſtom was.

(b) *Petitiones coram Domino Rege ad Parliam. &c.* 18 *E.* 1. *Rot.* 7. *Theſaur. Recept. Scaccarii.* The firſt Grant of Freedom from Arreſt.

Mr. (c) *Prynne* in his Fourth Part of his brief Regiſter would have the Privilege to be Perſonal, and ſo to neceſſary Servants attending, and but to take place the firſt day he is a Member, after he hath taken the Oath, and not to extend to Chancery Suits, and I know not how many diminutions of this Privilege; ſo I ſhall only recommend the Inquiſitive Reader to his Collections

(c) *P.* 478. *ad* 483. 625. *to* 699. 817. *to* 869. 989. 1213. *to* 1220. How Mr. *Prynne* qualifies this Privilege.

Collections, and for the full enumeration of all Caſes that have been determined by the Houſe of Commons, to (*d*) Mr. *Hackwel*, who hath collected all Modern Precedents; it being a Book very uſeful to underſtand the modern uſage of the Houſe of Commons in paſſing Bills, and other neceſſary points, that ſuch as are not verſed in the practice of, may find very beneficial to them; and ſhall add upon this Head, the Summary of King *Edward* the Second's Writ to the Sheriff of *Yorkſhire*, to take Pledges of *Walter Fleming* of *York*, and three others, to appear the next *Eaſter* Term, to ſhow why they Arreſted the Prior *Malton*, returning from the Parliament at *Lincoln* to his Priory, whenas the King ought to protect and defend the Members of Parliament in their coming to, ſtaying there, and returning from the Parliament; the words are, *Cum ad Parliamenta in quibus tam noſtri, quam Regni noſtri negotia debent pertractari, Prælatos, Comites, Barones, & alios tam Clericos quam Laicos, per quorum induſtriam ſuper negotio hujuſmodi, Conſilium ſalubrius poterit adhiberi, ad mandata noſtra vocatos, & comparentes, in veniendo ad eadem Parliamenta, ibidem morando, & exinde redeundo, ab omnimodis injuriis, oppreſſionibus & gravaminibus nos oportet protegere & tueri.*

(*d*) Memorial, *p.* 88. *ad* 116.

How the King is obliged to protect the Members from Arreſts.

This Privilege ſeems to be grounded upon King (*e*) *Edward the Confeſſor's* Laws, properly applicable to Liberty, to attend Divine Worſhip, Synods, and Chapter-meetings: the words are, *Si quiſpiam devote ad celebrationem Sancti, pacem habeat eundo, ſubſiſtendo, redeundo, item omnibus ad Eccleſiam cauſa Orationis euntibus, pax in eundo, & redeundo ſit eis; ſimiliter ad Synodum, ad Capitula venientibus.* The curious may ſee more in the *Leges Saxonicæ*, *Sect.* 9. and in *Frederick* (*f*) *Lindebrogus.*

How grounded upon *Edward the Confeſſor's* Law.

(*e*) *Hoveden. Annal. pars poſter. p.* 601. *Lambard. Archaion. Spelman. Conc. tom.* 1. *p.* 689.

(*f*) *Cod. ex Legum Antiq. p.* 475.

It is to be noted, that this, as all other Privileges, is from the Kings Grant, as *Dyer* is expreſs in his Argument on this Caſe, That the perſon of every ſuch Member ought to be privileged from Arreſt at the Suit of any private Perſon during the time that he is buſied about the Affairs of the King and the Realm; and this (*g*) Privilege is always granted by the King to his Commons at the Requeſt of the Speaker of Parliament the firſt day; and thoſe that had the benefit of this Privilege, obtained it by a Writ of Privilege iſſuing out of Chancery; but of late, it is done by the Houſes verbal Order, Serjeant or Mace, without any Writ of Privilege, *Habeas Corpus*, previous complaint, Petition to, or Order from the King and Lords, as in former times; againſt which uſage Mr. *Prynne* makes loud Complaints.

Fol. 60.

This Privilege of the King's Grant.

(*g*) *Et tiel Privilege ad eſtre touts foits grant per le Roy, a ſes Commoners, al Requeſt del Prolocutor del Parlement, le primer jour.*

The firſt Precedent Mr. *Prynne* or others can diſcover, being that of Mr. *Ferrers* recited at large in (*h*) *Holingſhed*, which in ſhort is this: Mr. *George Ferrers* being the Kings Servant and Burgeſs for *Plymouth*, was Arreſted by a Proceſs out of the Kings Bench, carried to the Counter: By order of the Houſe the Serjeant of the Parliament was ſent to demand delivery, but was forceably reſiſted, and the Crown of the Mace of Arms was beaten off

(*h*) *Hiſt. p.* 1584. 33 *H.* 8.

Mr. *Ferrers* Caſe the firſt, when the Commons had liberty to puniſh the Breakers of this Privilege.

off in defending the Serjeant. This being declared to the Houſe (of whom there were not a few, as well of the Kings Privy Council, as alſo of his Privy Chamber) they would ſit no longer without their Burgeſs, but retired to the Upper Houſe, where the whole Caſe was declared by Sir *Thomas Moile* their Speaker, before Sir *Thomas Audley* Lord Chancellor; and all the Lords and Judges there aſſembled, judging the contempt to be very great, referred the puniſhment thereof to the Order of the Commons Houſe. The Lord Chancellor offered to grant them a Writ to the Sheriffs of *London* to require delivery; which the Houſe refuſed, being clear in opinion, that all Commandments, and other Acts proceeding from the nether Houſe were to be done and executed by their Serjeant, without Writ, only by ſhew of his Mace which was his Warrant.

The Houſe applying it ſelf to the Lords, (who were, ſaith Mr. *Prynne*, (*i*) the ancient proper Judges of the Violations and Violators of the Commons Privileges) was the right Parliamentary way for their Members Releaſe; and if they had applied themſelves to them at firſt, they had prevented all Affronts to (*k*) themſelves and Officers, and met with no oppoſition. And Mr. *Prynne* humbly apprehends that this Precedent will not warrant an abſolute Juriſdiction in the Houſe of Commons without any antecedent Complaint or (*l*) Petition to the King or Lords in Parliament, to puniſh any breach of their Members Privileges, not firſt complained of to, and adjudged by the King or Lords to be an actual breach, or referred to themſelves by the Lords or King, to puniſh, or without their ſubſequent Ratification; or that it will juſtifie the Enlargement of any of their Members or menial Servants out of Execution by their Mace alone, without an *Habeas Corpus*, Writ of Privilege, or ſpecial Act of Parliament, or matter of Record for the Sheriff or Officers Indemnity againſt Actions of Eſcape, or for the Plaintiffs relief to recover his Debt by a ſecond Execution: for the proof of all this I muſt refer the inquiſitive Reader to Mr. *Prynne*'s (*m*) Fourth Part of his Brief Regiſter, wherein he hath largely examined moſt of the then claimed Privileges of the Houſe of Commons, and diſallows of them, when not judged by the King and Lords. In which Controverſie I ſhall not preſume to write any thing, becauſe it will be more pleaſant and ſatisfactory to have recourſe to himſelf.

(*i*) Brief Regiſter, *part* 4. *p.* 860.

(*k*) *Id. p.* 862, 863.

(*l*) See Freeholders Grand Inqueſt, from *p.* 50. to 64.

Application to be made to the King and Lords, for puniſhment of Violators of this Privilege.

(*m*) *Sect.* 10. *a p.* 622. *ad* 870.

SECT.

SECT. 10.

Concerning Regulating Elections.

THE first thing I find concerning new Elections, in the place of Absents and Defaulters, is in the 5 *E.* 2. as I have touched before; divers Knights, Citizens and Burgesses departing from the Parliament, the King thereupon issued out Writs to several Sheriffs, to summon them to return to the Parliament, or to chuse other fit persons in their places, if they cannot be at leisure to come up.

Cl. 5 *E.* 2. *m.* 26. *dorso.*

Vel alios, ad hoc idoneos, loco ipsorum, si ad hoc vacare non possunt, eligere.

The Commons in this Age medled not with the re-summoning, or causing new ones to be Elected, in the rooms of those that could not come.

I have before instanced in several Summons, wherein the Kings ordain the Sheriffs to re-summon the Members of former Parliaments, or others, for those who were dead, or unable, and sometimes but one of those: By which it appears, that in those days the King solely Authorized new Elections, where any were dead or disabled.

The King anciently only ordered new Elections.

The first Petition against an undue Election, that I have met with, is *Anno* 7 *R.*2. from the Mayor, Bailiffs, and Commons of *Shaftsbury*: To our thrice Excellent and thrice Gracious Lord, our Lord the King, and the thrice noble Lords, and sage Commons of this present Parliament, That whereas they had chosen *Walter Henly*, and *Thomas Steward*, the Sheriff of *Dorsetshire*, for the last had returned *Thomas Camel*, to the great dammage of our Lord the King, and contrary to the Will of the Mayor, *&c.* So that here the Complaint is to the King, the Lords, and Commons jointly, and the name of this *Camel* is not endorsed returned in the Writ, but the other two.

Firſt Petition againſt undue Elections. *Prynne's Brevia Parl. rediviva, p.* 286. *A noſtre tres excellent, & tres gracious Seignior, noſtre Seignior le Roy, & les tres nobles Seigniors, & Sages Comuns, &c. pleignont les Major, &c.*

In all the Statutes made for regulating Elections, they run, The King willeth and commandeth, 5 *Ric.* 2. *c.* 4. Our Lord the King at the grievous complaint of the Commons, hath ordained, 7 *H.* 4. *c.* 15. and so, Our Lord the King ordained, 11 *H.* 4. *c.* 1. 5 *H.* 5. and such like in all the Statutes to 8 *H.* 6.

See Freeholders Grand Inqueſt, *p.* 15, 16.

So in the Statute, 5 *R.* 2. *Par.* 2. *c.* 4. All Persons which shall from henceforth receive the Summons of Parliament, and come not at the said Summons (except he may reasonably and honestly excuse himself to our Soveraign Lord the King) shall be amerced, and otherwise punished, as of old time, *&c.* So that here the Excuse is to be made to the King; so that it was not then in use for the Commons to fine and tax their Members.

Prynne's Plea for Lords, *p.* 393.

In the Parliament holden at *Westminster*, 5 *H.* 4. because the Writ of Summons of Parliament, returned by the Sheriff of *Rutland*, was not sufficiently or duly returned, as the Commons conceived, the said Commons prayed our Lord the King, and the Lords in Parliament, that this matter may be duly examined in Parliament, *&c.* Whereupon our Lord the King in full Parliament

Id. 391. *Rot. Parl.* 5 *H.* 4. *num.* 38.

The Commons petition the King and Lords to examine and order undue Returns.

liament commanded the Lords in Parliament to examine the ſaid matter, and to do thereupon as to them ſhould ſeem beſt in their Diſcretions. So the Lords called before them the Sheriffs, and Parties, and it was agreed by the ſaid Lords, that the Sheriff ſhould amend his Return, and the Sheriff for his default ſhould be diſcharged of his Office, and committed Priſoner to the Fleet, and make Fine and Ranſom at the King's pleaſure.

Id. p. 364, 365. Mr. *Prynne*'s Opinion.

Upon this and other Precedents Mr. *Prynne* ſaith, That no Statute doth give the Commons Houſe the leaſt Power or Authority to judg or determine the Legality or Illegality of any Elections, but leaves this to the King and Lords to redreſs, as at firſt before their making, and gives the Knights duly choſen, but not returned, a hundred Pound Damages againſt the Sheriffs, and Citizens and Burgeſſes forty Pound againſt Mayors and Bailiffs, who make falſe Returns, by way of Action of Debt in the Kings Courts at *Weſtminſter*, or in the Star-Chamber, when in being, or before the King, Lords, and Council, as in *Bronker's* caſe, *Trin.* 1 *Eliz.* not in the Commons Houſe, as the Statutes and Precedents in the Law-Books reſolve. So that he ſaith, how the Commons are now become ſole Judges of all falſe Returns, and Elections, and that *perlegem & conſuetudinem Parliamenti*, againſt all theſe Acts and Precedents, let Sir *Edward Coke* and others reſolve him, and the Intelligent when they are able; for late and arbitrary Priviledges are of no value, but ancient uſage, and Law of our Parliaments, and ſolid Reaſon, which cannot be produced to juſtify theſe late Innovations and Extravagances.

Dyer, fol. 113, 168. *Plowden, fol.* 118. *to* 131. Old Book of Entries, *fol.* 446, 447.

Rot. Parl. 8 *H.* 6. *num.* 391. Petitions from the Commons to the King and Lords, about Elections.

The Statute of 8 *H.* 6. to prevent Tumults, Uproars, and Diſorders in the Elections, is grounded upon a Petition from the Commons, that the King by advice and aſſent of the Lords Spiritual and Temporal, would ſeclude all but Freeholders of forty Shillings a Year Lands above all Reprizals: which was more than forty Pound a Year now, being the twentieth part of a Knights Fee.

Rot. Parl. 18 *H.* 6. *m.* 13. *num.* 18.

In 18 *H.* 6. it was ſhewed to the King and the Lords Spiritual and Temporal, That *Gilbert Hore*, Sheriff of the County of *Cambridge*, made no Return of Knights upon the King's Writ: Whereupon the King, by Advice and Aſſent of the Lord Spiritual and Temporal, ordered a new Writ. So that then there were no other but the King that had the Power to cauſe new Elections, with Advice and Conſent of the Lords; and ſo the King iſſued out new Writs.

Anno 29 *H.* 6. *Nicholas Styncle* Knight, *Richard Bevel, &c.* and other notable Eſquires, Gentlemen, and other Men holding Fees, who may expend 40 *s. per Annum*, beyond Reprizes, choſe *Robert Stonham* and *John Stynecle*, notable Eſquires.

Petition of Subjects to the King about Elections.

To this is annexed a Petition to the King our Gracious and Sovereign Lord, ſigned by 140 Gentlemen and Freeholders, in behalf of thoſe againſt one *Henry Gimber*, who was not of Gentile Birth, choſen by the number of 70. and the Under-Sheriff

Sheriff countenanced him and his Party, and would not ſuffer theſe 140 to be examined about their Eſtates, and give Voice, *thoue he might clearly yarely expend* 20 *Mark, without that we ſhould have offended the Peace of Yow, our moſt doutye Soveraign Lord, and ſo we departed, for dread of the ſaid Inconveniences, that was likely to be done of Manſlaughter; and what the Sheriff will return in this behalf we can have no notice. For which Cauſes, we your true humble Suggets and Liegemen, in our moſt lowly Wiſe, beſeeching you our moſt douty Sovereign Lord and King, theſe Premiſſes may be conſidered for Your moſt Aid, and our Freedom; that the ſaid Sheriff may be by Your great Highneſs ſtreightly charged to return the ſaid Robert Stoneham*, &c. Thus far the Petition.

From this memorable Petition Mr. *Prynne* makes many obſervations; the principal of which are, that the King himſelf was to redreſs and rectify all falſe and undue Returns. Secondly, That this is the only clear Declaration and Record, he hath met with, complaining againſt a Sheriff giving of an Oath, and Poll to ſome Freeholders, and denying it to others. Thirdly, That when legal Electors cannot be ſworn or polled, without breach of the Peace, or Manſlaughter; they may juſtly depart, and ought to make ſuch a complaint and declaration, under their hands and Seals. Fourthly, That Ignoble perſons, who are not of Gentile birth, ought not to be elected Knights of Shires. Whoever deſires to peruſe more concerning the ancient uſage in Elections, may peruſe Mr. *Prynne*'s Plea for the Lords, from page 371. to 416. his Second Part of Brief Regiſter, *p.* 118, 119, 139, 140. and ſeveral other places.

A Sheriffs denying the Poll, petitioned againſt.

I ſhall only add what Queen *Eliz.* 18 *Regni* ſaid in this caſe, That ſhe was ſorry the Commons medled with chuſing and returning Knights of the Shire for *Norfolk* (it is to be preſumed, the like ſhe might have ſaid of any other County, if there had been occaſion) a thing impertinent for the Houſe to deal with, and only belonging to the Office and Charge of the Lord Chancellor; from whom the Writs iſſue, and are returned.

Freeholders Grand Inqueſt, *p.* 60. *D' Ewes*'s Journal, *fol.* 393.

Having thus given a brief account of the ancient Uſage, I come to the modern way, which, according to Mr. *Hackwell*, is that a general order hath uſually been made in the beginning of the Seſſion, to Authorize the Speaker to give Warrant for new Writs, in caſe of Death of any Member; or of double Returns, where the Party makes his choice openly in the Houſe, during that Seſſion, as it was ordered in the beginning of the Parliament, 18, and 21 *Jacobi primi*: and where ſuch general Order is not made, Writs have iſſued by Warrant of the Speaker, by Vertue of ſpecial Order, upon motion in the Houſe; and this Warrant is to be directed to the Clerk of the Crown in Chancery, by order of Parliament, 13 *Nov.* 1601.

Memorials, *c.* 6. *p.* 20. The modern Uſe of Regulating Elections.

The Committee of Privileges, 24 *March*, 21 *Jacobi* making their Report, a queſtion was put, Whether Sir *Thomas Holland*, and Sir *John Corbet*, were well elected Knights for *Norfolk*; the Houſe were divided, and it was over-ruled by the Houſe,

that the *No*'s ſhould go forth. So that now the Houſe of Commons are the ſole Judges of the validity or invalidity of Elections; and I ſuppoſe the King and Lords, judging the Houſe the competenteſt Perſons to make enquiry, and being willing to be eaſed of the trouble of ſuch Matters as relate only to the Members of the Houſe of Commons, have rather by connivence, than by any poſitive Ordinance in the Houſe of Lords, diſmiſſed this to the Houſe of Commons: againſt which, Mr. *Prynne* ſadly complains, ſaying, That ſince the Committees of Privileges have interpoſed in them, their Proceedings have been very irregular, and illegal, in reſpect all the Witneſſes they examine touching them, are unſworn, and give their Teſtimonies without Oath, upon which they ground their Vote; and for the moſt part very partially, for which cauſe it is uſually ſtiled the Committee of Affection.

Plea for the Lords, *p.* 413.

Sir *Simon D' Ewes*'s Journal, *p.* 494. In Queen *Elizabeth*'s time Application made to the Chancellor or L. Keeper.

In 35 *Eliz.* Sir *Edward Coke* being then Speaker, he was ordered to attend the Lord Keeper, to move his Lordſhip to direct a new Writ for chuſing a Burgeſs for *Southwark*, inſtead of *Richard Hutton*, ſuppoſed to be unduly elected, and another for allowing Sir *George Carew*, who was duly elected, but not returned to be Burgeſs of *Gamelsford* in *Cornwal*, and a third for changing the name of *John Dudley*, returned Burgeſs for New Town in the County of *Southampton*, into the name of *Thomas Dudley*, the Chriſtened Name being miſtaken: But the L. Keeper would allow no alteration, but in that of *Dudley*. Which makes ſome obſerve, That if the Houſe of Commons had then known they had any Power to mend the ſaid Returns, or puniſh the Offenders; or Sir *Edward Coke* had known it had been Law, he had never been ſent on that Meſſage. So that what Authority the Houſe hath, it hath accrued ſince.

Lawyer out-lawed, *p.* 12.

SECT. II.

Concerning the Houſe of Commons Cenſuring, Impriſoning, and Expelling their own Members.

The Reaſons for this Privilege.

As to the Commons Impriſoning and Puniſhing their own Members, for words by them ſpoken, or Miſdemeanors committed in the Houſe, there may be ſome reaſon for it: Firſt, becauſe by Law they are not Puniſhable elſewhere, for any raſh, indeliberate, and inordinate Speeches in Parliament, which do not amount to Treaſon, Felony, or Breach of the Peace; which it is ſuppoſed none in that rightly conſtituted Houſe will protect, though done in the Houſe of Commons, begun in 1641. Secondly, It is to be ſuppoſed that the Members upon their entring into that Houſe, unanimouſly agree for order ſake, that the leſſer number ſhould always ſubmit to the greater. So by ſuch Conſent and original Compact, every ſingle Member ſubmitting himſelf to the reſt, he hath no ſuch reaſon to complain, although they had no ſuch Authority; for *ſcienti & volenti non*

Statt. 4 *H.* 8. *c.* 8. *Coke* 4. *Inſtit. p.* 25. 31 *H.* 6. *c.* 26, 27.

fit

ſit Injuria; provided that they exceed not the common Rules of Juſtice, nor the Bounds of Eſtabliſhed Laws: for then no private Act can bind a Subject, though made with his own free Conſent, as appears in *Clark's* Caſe againſt the Mayor and Burgeſſes of St. *Albans*. *Coke, lib.* 5. *p.* 64.

The firſt Precedent I find that any Member of the Houſe of Commons was complained, and Petitioned againſt for Miſdemeanors, and put to anſwer before the King and Lords in Parliament, and there judged, and fined, was 16 *R.* 2. the *Wedneſday* after the Parliament began; when Sir *Philip Courtney*, returned one of the Knights for *Devonſhire*, came before the King in full Parliament, and ſaid that he underſtood how certain People had accuſed, and ſlandered him to the King and Lords; therefore prayed to be diſcharged of the ſaid Imployment, until the accuſations, *&c.* were tryed: and becauſe his ſaid Prayer ſeemed honeſt to the King and the Lords, the King granted him his Requeſt, and diſcharged him in full Parliament; and the *Monday* following, at the Inſtance and Prayer of the Commons, the King granted that he ſhould be reſtored, and remitted to his Place. In the Parliament, 4 *H.* 4. the accuſations againſt him being re-inforced, the King and Lords adjudged, that he ſhould be bound to his good Behaviour, and committed to the Tower for his Contempt.

Rot. Parl. 16 *R.* 2. *num.* 6.
Members of the Houſe of Commons puniſhed for Miſdemeanour by the King and Lords.
Exact Abridgment, *p.* 417.

By which, ſaith Mr. *Prynne*, it appears, That only the King and Lords in full Parliament can ſuſpend or diſcharge any Knights or Commoners ſitting in Parliament, and have Power of reſtoring and re-admitting a ſuſpended Member of the Commons Houſe: and he anſwers the Precedents that Sir *Edward Coke* brings, 4 *Inſtit.* p. 23, and 3 *Inſt.* p. 22. and many others which would be tedious here to inſert.

Plea for the Lords, *p.* 386, 387.
Vide pag. 296, 297, 299, 344, 371, 372, 373.

The firſt Precedent he finds, that the Commons began to ſeclude one another, upon Pretence of undue Elections, and Returns, was in Queen *Elizabeth's* time, when *Thomas Lucy*, 8 *Eliz.* was removed out of the Houſe for giving four Pound to the Mayor of *Weſtbury* to be choſen a Burgeſs, and the Mayor fined and impriſoned; and 23 *Eliz.* Mr. *A. Hull* for publiſhing the Conferences of the Houſe, and writing a Book to the diſhonour of the Houſe, was committed to the Tower for ſix Months, and fined five hundred Mark, and expelled the Houſe; and in King *Charles* the Firſt's time, this Power over their Fellow-Members was greatly improved; in which how far Mr. *Prynne* then concurred I know not, but after he was ſecluded, he every where writes with great earneſtneſs againſt this uſage; but whether with Judgment, Law, and Reaſon, I ſhall leave others to judge, only I think fit to inſert ſome of his Invectives againſt the Proceedings of that unparallell'd houſe of Commons.

The firſt Precedent of the Houſe of Commons ſecluding their Members.

Firſt, he ſaith, There can be no legal Trial or Judgment given in Parliament, in Criminal Cauſes or others, without Examination of Witneſſes upon Oath, as in all other Courts of Juſtice, which

Id. p. 309.
Mr. *Prynne's* Reaſons againſt this uſage.

Littleton, ſect. 212. *Coke, ibid.*

which the Houſe of Commons cannot do. Secondly, That it is a Rule, both of Law and Juſtice, That no Man can be an Informer, Proſecutor, and Judge too, of the perſons proſecuted and informed againſt: the Commons being in the nature of the Grand Inqueſt, being ſummoned from all parts of the Kingdom, to preſent Publick Grievances, and Delinquents to the King and Peers for their Redreſs. Thirdly, That all the objected Precedents are of very puny date within time of memory, therefore unable to create a Law, or Cuſtom of Parliament, or any right of ſole Judicature in the Houſe of Commons. Fourthly, That all theſe Precedents were made by the Commons themſelves, unfit Judges in their own Caſes, much leſs over one another, being all of equal Authority: ſo that, in his opinion, they could no more expel or eject any of their Members by their own Authority, without the King and Lords concurrent conſent, than one Juſtice of Peace, Committeeman, or Militia-man can unjuſtice, or remove another; ſince *par in parem non habet poteſtatem*, neither in Eccleſiaſtical, Civil, Military or Domeſtick Affairs. Fifthly, That they are all againſt Law, becauſe *coram non Judice*; he having throughout the whole Diſcourſe, endeavoured to prove, That the Commons have no right or power of Judicature, much leſs of ſole Judicature in our Parliaments, but only the King and Lords. Sixthly, That theſe Precedents are but few, never judicially argued, and rather connived at, than approved by the King and Lords, taken up with other more publick buſineſs; therefore paſſing *ſub ſilentio*, they can make no Law or Right, as is reſolved in *Long*, 5 E. 4. *fol.* 110. *Cook*'s four Rep. *fol.* 93, 94. *Slade*'s Caſe, and ſix Rep. *fol.* 75. *Drurie*'s Caſe. Seventhly, In the long Parliament of King *Charles* the Firſt, they began to ſeclude Projectors, Monopoliſts, *&c.* though duly elected; then ſuſpended and ejected ſuch who were Royaliſts, and adhered to the King; then they proceeded to impriſon and eject thoſe Members, whom the Army-Officers impeached or diſliked, as a corrupt Party, or corrupt Majority: and ſo fifty or ſixty, by the power of the Army, ſecured, ſecluded, and expelled near 400 Members; and made themſelves the Commons Houſe, without them, and ſo proceeded to vote down, and ſeclude both King and Houſe of Lords, and voted themſelves to be the Parliament of *England*, and ſole Legiſlators, and Supream Authority of the Nation. The conſequences of all which are too well known to the whole Kingdom, whoſe Calamity of Civil War, and all the unſpeakable Tragedies of it, flowed from the packing of Members in the Commons Houſe, and the Aſſiſtance the People (relying upon their Sageneſs, and Authority) afforded them.

Coke 4. *Inſt. p.* 24.

Plea for the Lords, *p.* 373.

Id. p. 387.

See Legal Vindication, *p.* 10.

Id. p. 373.

Exact Collections of Ordinances, *p.* 541. to 558.

Plea for the Lords, *p.* 414, 415.

How the Houſe of Commons of the Parliament 1641. ſecluded their Members, till there were not above 70 left.

How this revived againſt Abhorrers.

We had of later Years a freſh revival of the ſame method in the Houſe of Commons, expelling thoſe they called Abhorrers: which is ſo well known, that I need ſay nothing of it; yet I would recommend to all intereſted Perſons, the peruſal of

two

wo Treatiſes, which though they paſs for Pamphlets, yet have been writ by Judicious Authors, and thoſe are, *The Lawyer outlawed*, and the *Three parts of the Addreſſes*, which are Books very fit for Gentlemen to peruſe.

The unqueſtioned Rights of the Commons.

How full and unqueſtioned a power the Commons have to repreſent Grievances to the King, and petition for Redreſs; to impeach any Perſon of the higheſt Quality that is a Subject, for Treaſon, or high Miſdemeanors; to have the ſole Power in having all Bills, for Subſidies, Aids and Supplies, to begin, and, I think, be perfected in their Houſe; and the Privileges they petition for by their Speaker] are ſo well known, that they need no Diſcourſe upon.

4. *Inſtit. p.* 28. Whether the Houſe of Commons be properly a Court.

But I find ſeveral Judicious Perſons will not allow the Houſe of Commons to be a Court; which Sir *Edward Coke* affirms, and uſes this only one Argument for it, Becauſe it is not Prorogued or Adjourned, by the Prorogation or Adjournment of the Lords Houſe; but the Speaker upon ſignification of the Kings Pleaſure, by the Aſſent of the Houſe of Commons, doth ſay, This Court doth Prorogue or Adjourn it ſelf. But to this it is anſwered, That if this were ſufficient to denominate a Court, every Committee of Lords and Commons, though never ſo few in number, muſt upon this account be a diſtinct Court; becauſe they may thus adjourn and prorogue themſelves without their reſpective Houſes. In another place, the ſame Chief Juſtice offers to prove the Houſe of Commons not only a Court, but a Court of Judicature and Record; for that the Clerks Book of the Houſe of Commons is a Record, and ſo declared by Act of Parliament 6 *H.* 8. *c.* 16. But this Houſe had no ſuch Book as a Journal, much leſs any Authentick Record, before the firſt Year of *Ed.* the Sixth; all their material proceedings till then, being drawn in Minutes, by a Clerk appointed to attend them, for that purpoſe; and by him entred of Record in the Houſe of Lords. Therefore the Words of the Statute are, That the Speakers Licence for Members going into the Country, be entred of Record, in the Book of the Clerk of the Parliament, appointed for the Commons Houſe: and this Journal is rather a Regiſter of what paſſeth, than ſuch a Record as denotes a Court of Judicature, as the Author of *The Lawyer outlawed* endeavours to prove; becauſe there is no Court but what is eſtabliſhed by the Kings Patent, by Act of Parliament, or by the Common Law, *i. e.* the conſtant immemorial Cuſtom of former Ages: for by that the Houſe of Lords is the ſole ſupream Court of Judicature; it having never been heard of before Sir *Edward Coke*'s fancy, That there were two diſtinct Courts in the ſame Parliament. Alſo there is no Court without a power of tryal; but the Houſe of Commons have no power to try any Crime or Offence, becauſe they cannot examine upon Oath: and there can be no legal Tryal without Witneſſes, nor are any Witneſſes of any force in Law, unleſs examined upon Oath.

Lawyer outlawed. *p.* 18.

4. *Inſtit. p.* 23.

When the Houſe of Commons had a Journal firſt.

P. 17, 18, 19. *Plowd. Com. fol.* 319. *Coke* 1. *Inſt. fol.* 260.

But

Some Obſervations on the Privileges of the Houſe of Commons in general.

But I ſhall not enter into theſe Controverſies, but ſhall now lay down ſome general Obſervations and Rules, which Judicious Perſons have noted as worthy the conſideration of the Honourable Houſe in point of their claims of Privileges and Judicature.

Firſt, King *James* the Firſt in his Declaration, touching his proceedings in Parliament, 1621. reſolves, That moſt Privileges of Parliament grew from Precedents, which rather ſhew a Toleration than an Inheritance: therefore he could not allow of the Stile, calling it their Ancient and undoubted Right and Inheritance; but could rather have wiſhed, that they had ſaid, Their Privileges were derived from the Grace and permiſſion of his Anceſtors and him; and thereupon concludes, That he cannot with patience endure his Subjects to uſe ſuch Anti-monarchical Words, concerning their Liberties, except they had ſubjoyned, That they were granted unto them by the Grace and Favour of his Predeceſſors: yet he promiſeth to be carefull of whatſoever Privileges they enjoy by long Cuſtom, and uncontrolled and lawful Precedents.

All Privileges from the Crown.

Secondly, It is to be conſidered, That by the Great Charter it is declared, That no Freeman ſhall be taken, or impriſoned, or diſeiſed of his Freehold, or Liberties, or his Free Cuſtoms, or be Outlawed, or Exiled, or in any manner deſtroyed, but by the lawful Judgment of his Peers, or by the Law of the Land. So 28 *E.* 3. it is Enacted, That no Man, of what eſtate or condition he be, ſhall be put out of his Land, or Tenements, nor taken, nor impriſoned, nor diſ-inherited, nor put to death without being brought to anſwer by due Proceſs of Law. So 42 *E.* 3. *c.* 3. it is aſſented and accorded for the good Governance of the Commons, that no Man be put to anſwer without preſentment before Juſtices, or matter of Record, or by due courſe of Law, or Writ Original, according to the Old Laws of the Land. So Sir *Edward Coke* ſaith, Courts which are not of Record, cannot impoſe a Fine, or commit any to Priſon, becauſe theſe only belong to Courts of Record; for which ſee *Beecher*'s Caſe, *fol.* 60. 120. *Bonham*'s Caſe, and *lib.* 11 *fol.* 43. *Godfrey*'s Caſe: So in the Firſt Parliament of Q. *Mary* it is declared, That the moſt Ancient Statutes of this Kingdom do give, aſſign, and appoint, the correction and puniſhment of all Offenders againſt the Regality and Dignity of the Crown, and the Laws of this Realm, unto the King; which manifeſts, that all ſuch things are to be tried in his Courts. So that ſurely the Commons Privileges muſt be included; for to trouble any (ſaith the Author of *The Lawyer outlawed*) that doth not offend againſt the Crown, or Laws of the Land, is very Illegal and Arbitrary, and an high breach of the Liberty of the Subject. It would therefore be conſidered, how improbable it is, that after our Anceſtors have ſtruggled for many Ages, to preſerve themſelves and poſterity, from the unbounded Rule of Arbitrary Pleaſure; and having obtained that from their

C. 29. None to be puniſhed but by Legal Trial.

Stat. 28 *E.* 3. *c.* 3.

Nulla Curia quæ Recordum non habet, poteſt imponere finem, neque aliquem mandare carceri, quia iſta tantummodo ſpectant ad Curias de Recordo.
Mar. Seſſ. 3.

P. 23.

Id. p. 16.

Infœliciter ægrotat, cui plus mali venit a Medico quam a Morbo.

their Soveraigns, in ſo much, that they can neither be fined or impriſoned by their Soveraign (unleſs for tranſgreſſing ſome known Penal Law of the Land) ſhould leave any Arbitrarineſs in the Houſe of Commons, who are but the Peoples honourable Deputies, Truſtees, and Attorneys.

The Law hath provided where the Breach of the greateſt Privileges are to be tried.

Thirdly, It is to be conſidered that the Law hath expreſly provided, where and how Breaches of Privilege ought to be puniſhed, 5 *H.4.c.*6. and 11 *H.6.c.*11. about any Aſſault upon a Parliament man, or his menial Servant, to be in the Kings Bench. Since therefore ſuch Aſſaults are far more Criminal than Arreſts of them, or words ſpoken againſt them, or inferiour miſdemeanours (to argue *a majori ad minus*) it ſhould ſeem rational that in the Courts of Juſtice (being open to redreſs all ſorts of Illegalities) matters ſhould be rather tryed, than that perſons ſhould be puniſhed by Impriſonments of the Houſe of Commons alone. For if this Arbitrarineſs were allowed, it would argue a great defect in our Laws, that they are not the entire Rule of the Subjects Civil Obedience; and if the ordinary Courts of Juſtice can try the greater, they may certainly try the leſſer Crime, as they have done in the Caſe of *Done* againſt *Welſh*, *River* againſt *Coſyn*, *Shewiſh* againſt *Trewynnard*. But I have ſufficiently ſhewed before, that in old time the determination and knowledge of the Privileges did belong to the Lords.

Mich. 12 *E.* 4. *Rot.* 20. *Excheq:* *Hil.* 14 *E.* 4. *Rot.*7. *Dyer, fol.* 59.

The Proceeding of the Houſes in *Anno* 1640. and 1680.

How agreeable theſe ways of Proceedings were to the Uſage of the Houſe of Commons in 1640. and 1680. are freſh in every ones memory, when not only they ejected and impriſoned their own Members, but by Meſſengers ſent for ſeveral Gentlemen, and others, no Members, for acting according to the known Laws, and King's Proclamations; and often for Perſons having ſpoke angrily or ſlightingly of ſome Member, as in the Caſe of Abhorrers.

It is to be hoped thoſe very Gentlemen now wiſh it might be forgot, as I hope it will never be put in practice again; when, after a chargeable ſending for up by the terrible Meſſengers, after being detained in Cuſtody during the Pleaſure of the Houſe, and brought to receive their Sentence on their Knees at the Houſe of Commons Bar, they were diſmiſſed: So that I knew one who principally to avoid the Charge (his Crime being for ſpeaking Words againſt a Member, in his Cups) was forced, upon notice of the Meſſenger's coming for him, to fly into *Ireland*.

That the Law and Cuſtom of Parliament may be declared.

Fourthly, It is worthy great Conſideration by all the Members of the Honourable Houſe of Commons, that it is an undoubted Maxim both in Law and Reaſon, and is neceſſary to the Obligation of all poſitive Conſtitutions, That they ſhould be publiſhed in expreſs Words: The immediate Laws, even of God Almighty, in the Opinion of Learned Men, being not obligatory where they were never promulged. Now ſince it hath not been hitherto publiſhed to the People, what this *Lex*

&

4. *Inſtit. p.* 15. *Illa lex ab omnibus quærenda, a multis ignorata, a paucis cognita.* Fleta, l. 2. c. 2.

& Conſuetudo Parliamenti is, (which Sir *Edward Coke* ſaith out of *Fleta*, is to be enquired into of all, is underſtood by many, and known to few) it would not only be obliging, but moſt neceſſary, that the Honourable Houſe would give a true and full Deſcription of this Law and Cuſtom of Parliament, and an exact Account of their Privileges, that People might in ſome meaſure, for the future, ſhun thoſe dangerous Rocks, and not be ſurprized or ſhipwrack'd on ſuch hidden Shelfs.

I ſhall cloſe this long Chapter (wherein, according to my Talent, I have endeavoured to compriſe what hath been voluminouſly treated of by all the Authors I am furniſhed withal, and digeſted things into an eaſie Method) with ſome Aſſertions of Mr. *Prynne*, whoſe Writings in this Particular are better eſteemed than many others.

Brief Regiſter, *part* 4. *p.* 685. Mr. *Prynne*'s Opinion concerning the great Privilege of the Commons.

He ſaith, The Parliament being the Supremeſt Court of Law and Juſtice, ought to proceed legally, according to the Courſe of Law, and not to enlarge or extend the Privileges of Parliament beyond their Ancient, Juſt, and Legal Bounds, nor alter the Law therein by their abſolute Power: Much more ought the Houſe of Commons themſelves to follow their Precedent, and not to extend their old, or vote up new Privilege, to the delay, retarding, or deluding of Common Right and Juſtice. Therefore he condemns the writing of Letters by the Speaker, 18 *Jacobi* 1. to ſtay a Tryal betwixt Sir *William Coxe* and Mr. *Humphrey Aylworth*; as likewiſe in other Caſes, the ſame Year, 3 *March*, and 20 *April*: which, he ſaith, is diametrically oppoſite to the Judges Oath, and againſt the Great Charter, which ſaith, *Nulli negabimus, nulli differemus Juſtitiam & Rectum*: To which I may add the Hardſhip uſed to Mr. *Sherridon*, who being in the Cuſtody of the Serjeant at Arms, the Warrant of Commitment being during the Pleaſure of the Houſe of Commons, without any Cauſe ſhown; now the *Habeas Corpus* Act is expreſs, That all Perſons are Bailable, by what Perſon ſoever committed, not excepting the King and Council, much leſs the Houſe of Commons, unleſs for Treaſon or Felony: One of the Judges made application to the Houſe of Commons, to know whether he might grant the Writ of *Habeas Corpus* to him. The Debate laſted three days, by reaſon of the Difficulty of the Cauſe: For if they openly declared againſt the *Habeas Corpus*, the Nation would be much alarm'd, and ſuſpect theſe Gentlemen, inſtead of ſecuring, intended to invade the Subjects Liberties; but if they allowed the Writ, the delicious Power of Impriſoning ſuch as they had a Pique to, was utterly loſt, and all Perſons referred to the ordinary Courts of Juſtice, or, upon their failure, to the Houſe of Lords, the Supreme Tribunal of *England*.

Ibid. p. 1210. 14 *Feb.* 18 *Jac. fol.* 24. *b.* *Ibid. fol.* 51. *b.* & *fol.* 137. See *Stat.* 2 *E.* 3. *c.* 6. 14 *E.* 3. *c.* 14. 20 *E.* 3. *c.* 1, 2. Lawyer outlawed, *p.* 28. Mr. *Sherridon*'s Caſe, who was denied the Benefit of the *Habeas Corpus* Act.

Sir *William Jones* againſt any ones Releaſe by *Habeas Corpus*, if they were impriſoned by the Houſe of Commons.

Sir *William Jones* inſiſted much upon the Power of the Houſe, and that they did not intend by that Act to bind themſelves, (which yet muſt bind the King) though it might as well be alledged, That he did not intend to bind himſelf by it. However

ever, Sir *William* perſiſted, urging, That whatever Reaſons may be given for diſcharging ſuch as are not committed for Breach of Privilege, (if grounded on the Act for the *Habeas Corpus*) will hold as ſtrong for diſcharging of Perſons for Breach of Privilege, and ſo conſequently deprive the Houſe of all its Power and Dignity, and ſo make it inſignificant; and ſaid, That was ſo plain and obvious, that all the Judges ought to take notice of it: and ſo judged it below the Houſe to make any Reſolution therein, but rather to leave the Judges to do otherwiſe at their peril, and let the Debate fall without any Queſtion. But Baron *Weſton* had the Courage to grant the *Habeas Corpus*, as rather willing to expoſe himſelf to the Diſpleaſure of the Houſe, than deny or delay Juſtice contrary to his Oath.

See Debates of the Houſe, *p.* 217.

Baron *Weſton* grants the *Habeas Corpus*.

I could not omit this remarkable Paſſage, as a *Specimen* of the Arbitrarineſs of the Leading Party in that Houſe; and now ſhall proceed to Mr. *Prynne*'s Remarks upon the Proceedings of the long Houſe of Commons.

Brief Regiſter, *part* 4. *p.* 846.

He obſerves, That Privileges may be loſt by the abuſe of the Power; and that whatever Privilege the Houſe hath, is from the King's Grant, or Toleration. Therefore, according to the Canoniſts Rule, If the Privilege granted be expreſſed in general, dubious, or obſcure Words, then it is in the power of him to interpret, who hath the power to grant. Now the Petition of the Speaker is, That the Commons in this Parliament may, and ſhall have all their Ancient and Juſt Privileges allowed them. Therefore the King, being the ſole Granter of theſe Privileges, muſt be the only proper Interpreter and Judge of them, as he is of all his other Charters of Privileges, Liberties, Franchiſes, and Acts of Parliament themſelves, after his Regal Aſſent thereto; not the Commons, or Perſons to whom they are granted; and that both in and out of Parliament, by Advice of his Nobles, or Judges of the Common-Law.

Privilegia omnino amittere meretur qui ſibi abutitur conceſſa poteſtate.

Ejus eſt interpretari cujus concedere. Summa Roſella. Privilegium 3.

Nemini liceat Chartas Regias niſi ipſis Regibus judicare. Placita Parl. 18 *E.* 1. *num.* 19. *p* 20.

Therefore he ſaith, firſt, That if the Commons by Petition to the King and Lords in Parliament, complain of the Breach of their ancient Privileges and Liberties, as they ever did in the Caſes of *Lark*, *Thorp*, *Hyde*, *Clerk*, *Atwyll*, and others; the King, by Advice of his Lords in Parliament, aſſiſted with his Judges, hath been, and (as he humbly conceives) is the ſole proper Judge of them and their violations; not the Commons, who being Parties, Proſecutors, and Complainants, are no legal indifferent Judges in their own or Menial Servants caſes, if they will avoid partiality, which is the reaſon the Law allows Challenges to Jurors in Civil and Criminal cauſes. Therefore he obſerves, that the Houſe of Commons, taking Informations without Oath, may be eaſilier abuſed by miſinformation, and ſometimes thereby are put upon over haſty Votes, which, upon finding out evil Combinations, they are forced to retract.

How the Breach of Privilege to be puniſhed, according to Mr. *Prynne*.

See the Authority, Brief Regiſt. *part* 2. *p.* 847.

Ibid. p. 1206.

Secondly, If the complaint of the breach of Privilege be made in the Commons Houſe, and thereupon an *Habeas Corpus*, Writ of Privilege, or *Superſedeas* prayed under the great Seal,

The Chancellor or Lord Keeper to grant the Writ.

for the Members or menial Servants releaſe, whoſe Privilege is infringed; the Lord Chancellor or Keeper of the great Seal, repreſenting the Kings perſon in Chancery (the Court for relief in caſes of Privilege) is the propereſt Judge, and Examiner of the claimed Privilege, and its violations upon Oath, and other ſufficient Evidence, aſſiſted by all the Kings Judges in caſes of difficulty, who thereupon will grant or deny the Writs.

The Judges of the Courts to which the Writ is directed, to judge of the validity of the Privilege.

Thirdly, When theſe Writs of Privilege, *Superſedeas*, or *Habeas Corpus*, are granted to any Member, or menial Servants, and directed to any of the Kings Courts to enlarge their reſtrained Perſons, or ſtay any Arreſts, Proceſs or Judgments againſt them; the Kings own Judges in his reſpective Courts, to which they are directed, are then the proper Judges of the Privileges of Parliament, and of their breaches ſuggeſted in theſe Writs; who may examine, not only all matters of Law or Fact compriſed in them, which are Traverſable; but likewiſe adjudge, allow, or diſallow the very Privilege it ſelf, if no real ancient Parliamentary Privilege allowed by the Laws and Cuſtoms of the Realm.

How far he is in the right, I will not undertake to judge; but I remember, ſomewhere he wiſheth an Act of Parliament to paſs to adjuſt theſe matters: which poſſibly would prevent many of thoſe chargeable attendances about falſe Returns, and ſave much expence of time in the diſcuſſing of them, and enable the Subjects to pay a right and due obedience to them.

SECT. 12.

Concerning the Royal Aſſent to Bills.

I Have treated ſo much of this elſewhere, as to the ſole Power in the King, the ancient Cuſtom of Sealing the Acts with the Kings Seal, and of ſome of the Prelates and Nobles, as Witneſſes of their Aſſents; that I ſhall only now ſpeak as to the uſual formality of paſſing the Bills into Acts by the Kings laſt Act. For Mr. *Hackwell* hath given a full account of the manner how Statutes are enacted in Parliament by paſſing of Bills; to which Book I refer the curious Reader that would underſtand the order that is uſed in the debating and paſſing of them.

See alſo his Memorials.

When Bills are paſſed by both Houſes, upon three ſeveral Readings in either Houſe, they ought for their laſt approbation, to have the Royal Aſſent, whereby every Statute is, as Mr. *Hackwell* obſerves, like Silver ſeven times tryed.

Hackwell of Paſſing of Bills, *p.* 179. *ad* 182.

The Royal Aſſent determines not the Seſſion.

The Royal Aſſent is uſually deferred to the laſt day of the Seſſion: and becauſe ſome have been of opinion, that the paſſing of Bills, puts an end to the Seſſions, ſo that what ever Bills are ready, and paſs not the Royal Aſſent, muſt be again read three times in either Houſe; for the more ſecurity, it is uſual to inſert a Proviſo, That the Seſſion is not thereby concluded.

The

The Royal Aſſent is given two ways: Firſt, by Commiſſion ſince the Statute of the 33 *H.* 8. *c.* 21. wherein it is expreſſed, That the Kings Royal Aſſent by his Letters Patents under the Great Seal, Signed by his hand, and declared and notified in his abſence to the Lords Spiritual and Temporal, and to the Commons Aſſembled in the higher Houſe; is and ever was of as good ſtrengh and force, as if the King had been there perſonally preſent, and aſſented openly and publickly to the ſame.

Royal Aſſent by Patent.

The manner of the King's giving his Publick Aſſent is in this manner. The King cometh in Perſon, in his Parliament-Robes, and ſitteth in his State, and the Upper Houſe ſit in their Robes: The Speaker, with all the Commons Houſe, cometh to the Bar of the Lords Houſe; and in Sir *Thomas Smith*'s time, the Chancellor for the Lords, and the Speaker for the Commons, in ſet Speeches, returned the Prince Thanks, for that he hath ſo great Care of the good Government of his People, and for calling them together to adviſe of ſuch things as ſhould be for the Reformation, Eſtabliſhing, and Ornament of the Commonweal. After which, the Chancellor, in the Prince's Name, giveth Thanks to the Lords and Commons, for their Pains and Travel taken, which he ſaith the Prince will remember, and recompenſe when Time and Occaſion ſhall ſerve; and that the Prince is ready to declare his Pleaſure concerning their Proceedings, whereby the ſame may have perfect Life and Accompliſhment by his Princely Authority.

Royal Aſſent when the King preſent.

Sir *Th. Smith*'s Commonwealth, *p.* 45. Speeches uſed to be made there.

I think now, moſtly, the Speaker of the Houſe of Commons makes a Speech, acquainting the King with the purport of the Bills. Then the Clerk of the Crown readeth the Title of the Bills, in ſuch Order as they are in Conſequence. After the Title of every Bill is read ſingly, the Clerk of the Parliament pronounceth the Royal Aſſent, according to certain Inſtructions given from his Majeſty in that behalf.

Hackwell of Paſſing of Bills, *p.* 181, 182.

The Clerk of the Crown pronounceth the Royal Aſſent or Diſſent.

If it be a Publick Bill to which the King aſſenteth, the Anſwer is, *Le Roy le veult*, *The King willeth.* If a Private Bill, allowed by the King, the Anſwer is, *Soit fait*, *comme il eſt deſire*, *Let it be done as it is deſired.* And upon a Petitionary Bill the like is uſed.

If it be a Publick Bill (which the King forbeareth to allow) he ſaith, *Le Roy ſe aviſera*, *The King will adviſe.*

To a Subſidy Bill the Clerk pronounceth, *Le Roy remercie, ſes loyaux Subjects, accepte leur Benevolence, & auſſi le veult*, *The King thanks his Loyal Subjects, accepts their Benevolence, and alſo willeth.*

To a general Pardon is pronounced, *Les Prelates, Seigneurs, & Communs, en ceſt Parlement aſſembles, au nom de touts vous autres Subjects, remercient tres humblement voſtre Majeſty, & prient Dieu vous donner en ſante, bone vie & longe*: *The Prelates, Lords, and Commons, in this Parliament aſſembled, in the name of all your other Subjects, thrice humbly give thanks to your Majeſty,*

and pray God to give you in health, a good Life, and long.

P. 46. Theſe, ſaith Sir *Thomas Smith*, be taken now as perfect Laws and Ordinances of the Realm of *England*, and none other, and as ſhortly as may be, are printed, except it be ſome Private Acts, made for the Benefit or Prejudice of ſome Private Man; theſe be only exemplified under the Seal of the Parliament.

CHAP. XXIX.

Of Factious Combinations in Parliaments.

I Hope in the foregoing Chapters, I have ſo explained the Conſtitution of Parliaments, and the Legiſlative Power, that unbiaſſed and unprejudiced Perſons will no more be miſled by the Sophiſms, and plauſible pretences, which to aggrandize the Power of the two Houſes at firſt, and after of the Commons Houſe only, the Penmen of the long Parliament made uſe of; yet becauſe many of late were furbiſhing the ruſty Armour of their *Demagogues*, and trimming their Helmets with freſh Plumes, I conceive it neceſſary to take notice of ſome of their chiefeſt Arguments, and examine thoſe which had greateſt Influence upon the People.

The great and venerable name of Parliament, and its Authority, was conſtantly uſed as Shield and Buckler, to ward off all the Force of the Loyal Aſſaults; and Mr. *Prynne* writ a large Volume, which he ſtiled, The Soveraign Power of Parliaments: and when the very Lees and Dregs of the Commons Houſe was put in Ferment, that very Kilderkin would admit no lower Stile, than the ſupreme Authority of the Nation to be pearched on its Bunghole.

The various Acceptation of the word *Parliament*.

Therefore to diſabuſe the leſs conſiderate, and to detect the Frauds of thoſe, which under that great Name applyed whatever they met with in the Laws, or Hiſtory, to the Houſe of Commons; I think it neceſſary in the firſt place to clear the acceptation of the Word.

Appropriated to the Lords Houſe.

(a) *Egerton, ſect.* 4. 22, 23.

Sometimes the word *Parliament* is uſed for the Houſe of (a) Lords only; as when upon Writ of Error, any Judgment in the King's-Bench is examined in the Houſe of Lords, the Judgment is ſaid to be affirmed or reverſed by Parliament.

To both the Houſes.

The Appellation of *Parliament* is likewiſe uſed for the two Houſes, in regard they are the groſs Body, whereof the Parliament conſiſts, there only wanting the Sovereign Head to compleat it. But they are ſo far from being the High Court of Parliament, that they cannot co-unite to be an entire Court, either of Sovereign or Miniſterial Juſtice, but only in concurring in Votes in their ſeveral Houſes, for preparing of matters, in order

order to an act of all the Body; which when they have done, their Votes are so far from having any legal Authority in the State, as in Law there is no Stile or Form of their joynt Acts, further than Bills, nor doth the Law so much as take notice of them, till they have Royal Assent; without which, the Votes of the two Houses dye in the Womb, like an *Embryo*.

How properly the High Court of Parliament.

So that the proper use of the word *Parliament*, (as Authority of Law-making is annexed to the name) is only when the King and the two Houses concurr in one Act, and in that sence only is the Parliament the Supream Court, the highest Judicatory, and the most Sovereign Power: Not for any Soveraignty in the two Houses, and from them transferred to the King by their joining and consenting with him; but because every compleat and perfect Act of it, is the Act of the personal Will and Power of the Sovereign himself, standing in his highest Estate Royal.

Therefore whoever reads the Authors that writ in defence of the Parliament, must consider this Fallacy they frequently used, that he do not apply the Authoritative Act of the King, with the Consent of the two Houses, to the Houses without the King.

(*b*) Freeholder's Grand Inquest, *p.* 34.

The King is not one of the Three Estates.

From the Co-operation of the two Houses in preparing Laws, the late use (since King *Charles* the First's time) of the words, *Be it enacted by the King, the Lords Spiritual and Temporal, and Commons* (as if they were all Fellow-Commissioners) and the unwariness of some of the Penners of the King's Answers to some of the Papers of the two Houses, wherein they stiled the King the third Estate; the Commonwealths-Men have taken the advantage to reckon the King but as a third Legislator.

The *Modus* makes the Parliament to consist of six Parts.

Therefore I think it necessary to remove this Rub e're I proceed further. Although the Author of the Imposture, called the *modus tenendi Parliamentum*, makes six degrees of constituent Members of the Parliament, *viz.* The King first, then Secondly, the Archbishops, Bishops, Abbats, Priors, and other Clerks, who held Baronies. Thirdly, the Proctors of the Clergy. Fourthly, the Earls, Barons, and other great Men, who held to the value of a County or Barony. Fifthly, the Knights of Shires. Sixthly, the Citizens and Burgesses, to which he might have added the Barons of the Cinque-Ports; yet he saith the King is the Head, Beginning and End of the Parliament, and so hath no (*c*) Peer in his degree. Yet it plainly appears, that these we now call the two Houses, were by reason of their distinct Orders, most frequently divided into three. For in (*d*) 6 *E.* 3. at his Parliament at *York*, the Record saith, That on the *Friday* before the Feast of St. *Michael*, the Prelates, or the Clergy by themselves; the Earls and Barons by themselves; the Knights of the Counties, and the Commons by themselves treated, *&c.* Othertimes we find the Prelates, Earls, Barons, and great Men, and the Knights, Citizens and Burgesses, to have separate Consultations by themselves; and to give their several answers

(*c*) *Ita non habet Parem in suo gradu.*

(*d*) *As queux Prelats, ou la Clargie par eux meſmes; & les Countes & Barons par eux meſmes; Chevalers & Gentz de Countez, & Gentz de la Commune par eux meſmes entreterent.* Prynne Animadv. p. 10.

ſwers to Articles, and buſineſs propounded to them in Parliament, as Mr. *Prynne* out of the Abridgment of the Records of the Tower, hath given us above twenty inſtances.

The Lords Spiritual, Lords Temporal, and Commons, make the Three Eſtates.

At the making of the Statute of *Præmunire*, 16 *R.* 2. the Commons pray, That the Lords, as well Spiritual as Temporal, ſeverally, and all the Eſtates of Parliament might be examined, how they thought of that matter; and the Lords Spiritual anſwered by themſelves, and the Lords Temporal by themſelves; and the King was Petitioned to make this Examination. So in 40 *E.* 3. the King asking the Houſes, Whether King *John* could have ſubjected the Realm, as he did; the Prelates by themſelves, and the Dukes, Earls, and Barons by themſelves, gave their Anſwer. Beſides, we find (as at large I have before inſtanced in the laſt Chapter) the Writs of Summons of the Biſhops and Clergy, were only, *in fide & dilectione*; and the Barons generally, (e) *in fide & homagio*, or *Ligeancia*; and the Clergy granted their Subſidies apart, and diſtinct from the Nobles.

(e) *Stat.* 18 *H.* 6. *c.* 1.

Beſides, that the Biſhops are to be eſteemed the Third Eſtate, is clear by Act of Parliament: for it being queſtioned (f), whether the making Biſhops had been duly and orderly done according to Law; the Statute ſaith, That the queſtioning of it is much tending to the ſlander of all the Clergy, being one of the greateſt States of the Realm.

(f) 8 *Eliz. c.* 1.

So Sir (g) *Thomas Smith* (as in the laſt Chapter I have noted) diſtinguiſheth the two Houſes into three Eſtates, and Sir *Edward* (h) *Coke* ſaith expreſly, That the High Court of Parliament conſiſteth of the Kings Majeſty ſitting in his Royal Politick Capacity, and the three States of the Realm, *viz.* the Lords Spiritual, Lords Temporal, and Commons; the like the learned (i) *Cowel* affirms.

(g) *P.* 36.

(h) 4. *Inſtit. p.* 1.

(i) Interpreter, *tit.* Parliament.

Sir *Henry Spelman* (k) calls it a Colloquy of all the Orders of the Kingdom, convened by the ſole Authority of the King, to conſult and appoint in the Affairs of the Kingdom.

(k) *Solenne colloquium omnium Ordinum Regni, Authoritate ſolius Regis, ad conſulendum, ſtatuendumque de negotiis Regni indictum.* Gloſſ. p. 449.

This was alſo known to Foreigners, unintereſſed Perſons; for the Lord *Argenton* ſpeaking how Subſidies were granted in *England*, ſaith *, *Convocatis primis Ordinibus, Clericis & Laicis, & aſſentiente Populo:* And *Bodin* || whenever he ſpeaks of the Conſtitution of our Parliament, calls it the King and the three Eſtates of the Realm.

* *Lib.* 5. *p.* 253.
|| *De Repub. lib.* 6.

But to put all out of doubt, in King *Charles* the Second's Reign, it is determined in the Act for the Form of Prayers for the Fifth of *November*, For the Preſervation of the King, and the Three Eſtates.

Why in ſome of King *Charles* the Firſt's Writings the King was called the Third Eſtate.

Now the reaſon why in King *Charles* the Firſt's anſwer, we meet with the expreſſions of making the King the third Eſtate, was, becauſe at that time, the Biſhops being voted out of the Houſe of Lords, and the two Houſes ſetting themſelves in all the points of Controverſie in oppoſition to the King, the notion of a Triumvirate was more intelligible (as it may be thought) to

to the People, and thoſe who were ſo bitter Enemies to the King, and had ſuch a Rebellious force, would have ſtill increaſed the Peoples averſion, if the King had aſſerted his Royal Prerogative otherwiſe. Whether this were the true reaſon, or the overſight of the Penners of his Majeſties Anſwers, I will not undertake to determine; but I am induced to believe the firſt, becauſe, I find the King, and thoſe that writ in defence of his Cauſe, uſing frequently this way of Argument.

In every State there are three Parts (ſaith (*l*) one, the King ordered to write for him) capable of juſt or unjuſt Soveraignty, *viz.* the Prince, Nobles and People. Now through the Piety of our *Lawgiving Princes*, a juſt and regular courſe of Government being obtained, the ſtability of which being found to be more concerned in the Power of making Laws, than in any other Power belonging to the Soveraign; for preventing of Innovations, that might ſubvert that ſetled regularity, the frame and ſtate of Government was in ſuch a ſort eſtabliſhed, as that the Prince ſhould be limited from uſing the legiſlative Power, without concurrent aſſent of the *Peers* and *Commons*. By which means the conſtitution of our Parliaments, is ſo equal and geometrical, and all parts ſo equally contribute their Offices, that no part can have an extream predominance over other: Therefore to prevent any evil that might come by the admiſſion of two ſuch Bodies, to a participation of Power, in this particular of making Laws (if they ſhould combine againſt the Soveraign) the Law gives them an equal Power to aſſent or diſſent; ſo that oppoſing the ſingle Power of every one of them, to the Votes of every other two, there might be ſo ſecure a balancing of the Power of one againſt the other, that no practice of any two of them, ſhould do any prejudice and diminution to the third, without the third Party it ſelf did give conſent unto it: otherwiſe the King and Peers might oppreſs the Commons, the King and Commons oppreſs the Peers, or the Peers and Commons oppoſe the King; and the Peers being eaſily oppreſſed by the Commons (as we ſaw in our late calamitous Times) an *Appian Decemvirate*, or the 30 or 300 Tyrants might get the Power into their own hands.

(*l*) Review of Obſervations.

The Ballancing of the Powers in Parliament.

In another place he ſaith, Though properly Laws be the Acts of the King in Parliament, yet are they alſo truly the Acts of the whole Parliament; becauſe every of the Eſtates contribute their Power according to the diverſity of their Office and Intereſt, and ſo as from a ſacred *Tripos*, the civil Oracles of the Law are delivered.

It is therefore to be conſidered (ſaith a Judicious (*m*) Author, in anſwer to ſome other paſſages of his Majeſty that the Parliamentarians wreſted) That if his Majeſty, out of a deſire to ſave the effuſion of Blood, uſed ſuch gracious Expreſſions as were moſt likely to prevail with the People, and conſolidate their Minds, they ought not in Equity to prejudice the Rights of the Crown, although he had abdicated therein, ſome parts of his

(*m*) King's Supremacy aſſerted, *c.* 9. *p.* 96. where the Reader may find a full Anſwer to the Deductions they make from the King's way of arguing.

his Authority, and granted things deſtructive to his own Prerogative. From his Majeſties ſaying, That the Power, legally placed in both Houſes, is more than ſufficient to prevent, and reſtrain the Power of Tyranny, they infer, This cannot be made good without a Power of Reſiſtance; for that Tyranny cannot otherwiſe be reſtrained. Which is eaſily anſwered. For it cannot be underſtood, that the King means by this, a forceable reſiſtance or reſtraint, (*n*) but a legal one, ſo far as Humane Prudence can by lawful and juſt ways provide. The Power they have by Law, being to inflict puniſhments on evil Inſtruments, whereby others may be afraid to take upon them ſuch Imployments; and they may refuſe to give the King Subſidies, and other neceſſary Aſſiſtance, if he refuſeth to moderate exceſſes, which are Powers more efficacious than reſiſtance; the ſucceſs of the one being more probable and likely than the other.

(*n*) *Id poſſit quiſquam quod jure poſſit.*

The not aſſerting of King *Charles* the Firſt's Prerogative, diſadvantagious.

However, in my poor opinion, it had been more honourable, and probably more efficacious, to have ſpent leſs time in this kind of defending the Kings Intereſt by the Pen, and have imployed it in aſſerting the true Prerogative of the King, and his undoubted Rights, to have let the People, as well as the Houſes know, what he would reform, and out of Princely Clemency grant, for his Peoples eaſe, and at their earneſt Petition; but neither to have depreciated, or deſcended ſo much below the Majeſty and Dignity of his place, to enter into Reply and Duply, Altercation, and Apologies with his Subjects. But that King, compoſed all of Mercy, Juſtice, and Tenderneſs to his Subjects, judging others by his own Royal Standard of Integrity, let the Houſes ſeize his Ships, Magazines, and left them the City of *London*'s Purſe, while he retired to the North, and plied the Houſes with Declarations and Meſſages, to have reduced them to their Duties: and though his condeſcenſions were great, and the way of Argument ſuch as before I have inſtanced in; yet I cannot find (except in that particular of making himſelf one of the three Eſtates) that he yielded any part of his Royal Prerogative, till he was made Priſoner; that in his reſtraint he condeſcended to a temporary diveſting himſelf of the Militia, and other things, which all ſorts of Subjects (except the very chief of thoſe in Rebellion againſt him) found infinitely more tending to the enſlaving, and utter ruine of the People, than ever they could have been, if the King had managed all by his abſolute Will, and the direction of thoſe they accounted his worſt Inſtruments.

I having in ſeveral places cleared the Kings Soveraignty, ſhall only on this Head endeavour to anſwer the principal of thoſe popular Reaſons the Writers for the Parliament uſed, not grounded upon any Law or Conſtitution of the Government, but only upon the falſe ſuppoſition, That the Wiſdom of the two Houſes was to be valued above the Wiſdom of the King and Council, in propoſing matters for the Royal Aſſent, which were conducible to the Liberty of the Subject, which they pretended

tended was their whole deſign, and that they would eſtabliſh the Kings Throne in more Glory and Splendor than had ever been in any Ages.

The Monarchy of *England* not mixed.

The firſt and principal Topick they uſed, was, That the Monarchy of *England* was in its Conſtitution allayed, and the Power of the two Houſes, in making Laws, had ſuch a Copartnerſhip, and radical mixture, that they had ſomething more than a Conſultive and Aſſenting part; and that the King was oblig'd in the duty of his Office, and by his Coronation Oath, to grant what they deſired.

(o) King's Supremacy aſſerted, *p.* 74.

Mr. *Sherringham* (*o*) hath culled out the prime Arguments of the Author of the Treatiſe of Monarchy, The fuller Anſwerer, and others upon this Head, and ſo fully anſwer'd them, that I muſt refer the Reader to him for ſatisfaction, and ſhall only ſelect ſome of the chiefeſt of theſe Arguments, more for the orderly continuance of this Diſcourſe, than for any need of repeating them.

(*p*) Declaration from *Newmarket*, 9 *March* 1641.

Firſt, They ſay, That King *Charles* the Firſt owned the Law (*p*) to be the Meaſure of his Power, and if ſo, it is limited. But this concludes no more, than that his Power is of ſuch a ſize and bigneſs as the Law hath ordained; and if the Law give the King abſolute, full, and entire Power, and limits him only in the exerciſe of it, this is a reſtraint, and limitation according to ſuch Laws as the Soveraign hath eſtabliſhed in that particular alone, and is the happineſs of the *Engliſh* Subject, that Kings act not Arbitrarily: but this gives no Power to the two Houſes, to be any checks upon the King, who by the ſame Laws hath the Power of putting in execution, and ſuſpending the execution of the Laws in many Caſes; or that Ariſtocracy, or Democracy have any ſuch mixture with the Monarchy, as they can impoſe their Laws upon him. For to ſuppoſe a mixed Monarchy, conſiſting of Three Eſtates, independent for their Authority upon one another, and to have ſeveral ſhares in the Rights of Sovereignty, and to ſay, The Government of three Eſtates, is the Government of one Monarch, is perfect nonſence: for when (*q*) Monarchy, Ariſtocracy, and Democracy are melted and allayed together, that which reſulteth can take its name from none of the ſimple ſpecies, or kinds of Government, but muſt have ſome other Appellation.

(*q*) *Beſold. Synopſis Polit. Doct. l.* 1. *c.* 6.

How the two Houſes concur in making Laws.

Whoever will conſider aright of the concurrence of the two Houſes, in preparing Bills, will find, That though the Houſes be as the *Cauſa ſine qua non*; yet the efficient, procatarctick Cauſe, and the Authoritative Power in paſſing theſe into Laws, is the King only; and what the two Houſes do without his Aſſent, is but as the Counſellor at Law's framing a Deed, and the Clerks Ingroſſing the Indenture of Conveyance; but till the Seal be ſet to it, and delivery made, as the Act and Deed of Donor or Conveyor, it is of no force and virtue; neither do we call it the Act and Deed of the Counſellor or Clerk, but of the Perſon that ſeals it.

Another Objection thoſe Champions for the two Houſes made

(r) King's Supremacy, p. 84.

Objection, That the Mixture is in the Supremacy of Power.

made great noiſe with, was, That the Power where the Legiſlative is in all Three, is in the very Root and Eſſence of it compounded and mixed of thoſe three: ſo that where this height of Power reſideth in a mixed Subject, that is, in three concurrent Eſtates, the conſent and *concurſus* of all being moſt free, and none depending on the Will of the other, that Monarchy is in the moſt proper ſence, and in the very model of it, a mixed Conſtitution. And that ſuch is the State of the Monarchy of *England*, the Objector thinks clear, becauſe the Houſe of Peers are an Ariſtocracy, and the Commons a Democracy; and this mixture of Intereſts and Powers being in the very Legiſlative Power, he concludes the mixture is in the Root and Supremacy of Power, and not in the exerciſe alone.

Anſwer, That is only in the Exerciſe of the Power.

In anſwer to which it muſt be conſidered, That though the concurrence of both the Eſtates with the Monarch in the making and promulgation of Laws, be ſuch as our Laws deſcribe; yet it is no otherwiſe than in the precedent Chapters, by undeniable proofs, I have made it out, That what participation ſoever the two Houſes have with the King in the Legiſlature, it is only derivative from the Crown by the King's Summons, and the reſtriction of thoſe Summons to do and conſent.

(s) *Panorm. cap. Gravem de Sent. Excom.*
(t) *Bertol. in L. omnes Populi, ſect. de Juſtitia & Jure, q. 2.*
(u) *Suarez, lib. 1. de Leg. c. 8. n. 9.*
* *Beſold. de Juribus Magiſt. c. 2.*

It is known to be the common Aſſertion of (s) Canoniſts, (t) Civilians, and (u) Schoolmen, That the Legiſlative Power is communicable by the Princes allowance, and that ſuch a concurrence as our Kings have allowed, is no Argument of Supremacy; ſuch a mixture of the three Eſtates hath been in other Monarchies, which every where are owned to be abſolute in reſpect of Power. For as they are ſummoned by the Princes ſingle Authority, and diſſolved at his own pleaſure, they can claim no ſort of Right, during their Seſſion, further than to conſult about, and prepare Bills for the Royal Aſſent. Therefore (w) *Grotius* ſaith, *Iſtam Legiſlationem, quæ aliis quam Summæ Poteſtati competit, nihil imminuere de jure Summæ Poteſtatis, quod in Scholis dicunt, cumulative datum cenſeri non privative.* So in our Kingdom, every Corporation hath Authority to make Ordinances and Conſtitutions within their own Liberties, for the good Order and Government of the Body; and the Inhabitants (x) of every Pariſh, to make By-Laws and Ordinances among themſelves for their own profit, where they have Cuſtom for it, and for the Publick Good, where they have no Cuſtom: Surely this is a ſort of Legiſlative Power; yet thereby it cannot be inferred, that they have any Co-ordinate Power with the King in the Rights of Soveraignty.

(w) *De Imperio Summarum Poteſtatum circa ſacra, c. 8. num. 11.*

(x) *Coke 5. part, tit. Caſes de By-Laws & Ordinances.*

So that allowing the Power of the two Houſes as large as can be proved by the Laws (for the ſtretch, that the Parliamentarians would make, is by the Tenters they only have ſet up,) the whole latitude of the Nomothetical Power is not jointly in the two Houſes; for none but Strangers to our Laws can deny, That the King hath ſole Power to diſpenſe with the Statutes, and abate their Rigour, where a miſchief would otherwiſe

wiſe inſue, he alone hath Power by Edicts and Proclamations, to order all Affairs for which there is no order taken by certain and perpetual Laws.

The Legiſlative Power is either (y) Architectonical, or Preceptive. The Architectonical is that which layeth Materials of Law, and conſiſteth in two things; Firſt, in determining what is juſt, convenient, or neceſſary: Secondly, in declaring, and promulgating that to be actually made a Law, and Enacted, which upon conſultation is thought to be juſt, convenient, or neceſſary. The firſt ſhews no Jurisdiction in the Perſons who have it, but only an Office and Imployment to deliberate and conſult. But whoever hath the Second Power, hath a Jurisdiction to define Authoritatively what ſhall be Law; and this Preceptive Power is that which makes the Law ſacred and inviolable, and which giveth it force to oblige the Conſcience.

(y) King's Supremacy, *p.* 88.

Of Architectonical and Preceptive Power.

Now it is evident by undeniable Teſtimony and Authority, that the exerciſe of the Architectonical Power is only committed to the two Houſes, who have *votum conſultivum & deciſivum*, but it is derived from the King, who hath only the Preceptive Power. So that the Writers for the two Houſes, generally did uſe a Sophiſtical way of arguing, not diſcovering what they could not but know, the difference betwixt the King's, and the two Houſes Powers in the making of Laws. For ſubordinate Agents, that are but Inſtruments of another, and work by a derived Power, when they concur with the Principal and ſupream Agent, have their cauſality in producing the Effect; yet this doth not prove the Authority to be radically in them. As in an Eſtate of Lands (ſaith (z) Mr. *Sherringham*,) wherein a Man hath a perpetual Right in Fee, his Right is diſtinguiſhed from the King's Right, of whom he holds; the King having the demean of the Land, and the other the demean of the Fee.

(z) *Idem, p.* 91.

So it is in an Eſtate of Power and Authority; If the King granteth an Eſtate of Power, Authority and Jurisdiction in Fee-ſimple, or in Fee-tail, for term, longer or ſhorter, the King hath the demean of Power, and the other the demean of Uſe; the King hath *Dominium directum*, the other *Dominium utile*; which he applies to the two Houſes: but it muſt be likewiſe conſidered, that this diſtinct Authority they have, is wholly derivative, and ſo much the more depending on the Sovereign, as he can at his Pleaſure totally deprive them of the Exerciſe of it by Prorogation, or totally annihilate it by Diſſolution.

Another Objection they made, was from the Anſwer the King authorized a Gentleman to make to the Obſerver, That the three Eſtates are conſtituted to the End that the Power of the one ſhould moderate and reſtrain the exceſs of the Power in the other. From which he infers, That this is an Allay and mixture in the Root and eſſence of the Conſtitution.

Objection, The Three Eſtates to reſtrain the Exceſs of each other.

To this it may be anſwered, That there is no ſuch Power in the two Houſes; they are called to conſult, and to conſent. All they can do is, that they have the opportunity of ha-

Anſwer to it.

ving grievances redreſſed, becauſe they may otherwiſe deny the King the aſſiſtance he deſires. But they have no Authority of themſelves, to redreſs them, or to reſtrain and moderate his Exceſſes by Force, nor can they moderate the Exceſſes of one another by any Act of their own ſingly, further than the exorbitant Eſtate ſhall be willing to be moderated.

It is a moſt abſurd thing to imagine, that when the Law hath placed the Sovereign Power in the King, it ſhould again for a ſpace of time, during the Seſſion of Parliament, unſovereign Him, and place in the two Houſes the ſame Sovereign Truſt, and with a ſecond abſurdity, leave in the King's Hands the ſummoning and diſſolving, the Power by which himſelf ſhould be conſtrained; and to make up all, ſhould by Authority of that Power conſtrain all the Heads of the People, and even the Repreſentative Body of that Power, by Solemn Oath, to declare that the King is not only ſupreme Governour, but that he is *only* ſupreme Governour.

Beſides the Arguments they uſed upon this Head of a debaſed Monarch, that was not only to admit ſome of his Subjects into the Participation of his Burthen, but of his Soveraignty (whereby they pleaded for both the Houſes being joynt-Sovereigns for the time) they uſed other Arguments ſingly for the Houſe of Commons, which they endeavoured to aggrandize, and raiſe to a ſtrange over-towring heighth, above both King and Lords; and they grounded all their Arguments upon the immenſe Power of their being the Peoples Repreſentatives.

Objection concerning the Power of Repreſentatives.

The Obſerver ſaith, That the vertue of Repreſentation, is the great Privilege of Privileges, that unalterable Baſis of all Honour and Power, whereby the Houſe of Commons claims the entire Right of all the Gentry and People; and that there can be nothing under Heaven next to renouncing of God, which can be more perfidious, and more pernicious to the People, than the withdrawing from them; and doth acknowledge that the Arbitrary Rule was once moſt ſafe for the World: But now, ſince moſt Countries have found out an Art, and peaceable Order for publick Aſſemblies (he means by Repreſentatives) whereby the People may aſſume its own Power, and do it ſelf Right, without the diſturbance of it ſelf, or injury to Princes, he is very unjuſt that will oppoſe this Art and Order.

Anſwer, What Honour is due to Repreſentatives of the Subjects.

In anſwer to which it ought to be conſidered, That the Repreſentative Body deſerves the higheſt Honour and Obſervance that can be given to the Body Repreſented; but this Honour will depend upon two things: Firſt the quality and condition of the Body repreſented, and Secondly, on the quality of the Repreſentative it ſelf. If therefore the Body at large were an abſolute Sovereign (as in Republicks,) the true Repreſentative of that Body were to be obſerved with all Sovereign Honour, and due Subjection: But when the Body at large it ſelf is but a Subject (as it is in Monarchy) the Honour and Authority of the Repreſentative, cannot exceed the Honour and Authority of

of a Subject; for none can make the Image more than the Original, or, without Adulterating Arts, appear ſo. Therefore however abhorrent a Crime he makes it, in ſuch as concurr not in their Judgment with their Repreſentatives that exceed their Authority and Commiſſion: yet all ſober and juſt Perſons ought to conſider that the Subjects by giving Authority to ſome of their own Order, to repreſent them, and adviſe, and conſent for them, gave them no ſuch Power above that of Subjects; yea ſo much above the condition of their Sovereigns, that neither breach of Faith, nor the Oaths of Allegiance and Supremacy (which they never took to them) or any other Duty to their King, was comparable to the withdrawing from the Vote, or Act of their Repreſentators: as if the Rights of the Crown and Kingdom, and the Laws made by the King, with the aſſent of the three Eſtates in Parliament, did not ſo much concern the Commons of the Land; but that againſt all theſe they ſtood ſolely bound to the Repreſentatives, as the only Sovereign of their Obedience. I ſhall now offer ſome Reaſons againſt this dangerous Opinion.

Reaſons againſt the Power of Repreſentatives.

Firſt, It is to be conſidered, That in our Kingdom the Repreſentors are not equally choſen (as in the united Provinces, and other Commonwealths) but it lies in the Power of the Sovereign here to make a Town equal in number of Burgeſſes to a County: which doth vehemently demonſtrate, That the firſt Inſtitution and end of ſuch Repreſentatives was rather to miniſter Information of the State and Condition of that particular place, and adviſe and aſſiſt the Sovereign, and to conſent with him, and not to determine Sovereignly.

Secondly, The cockering the People in that Opinion, that the Soveraignty lies in *Materia prima* in them, and by their Repreſentatives, that they may exert it, is the certain way to ruin not only Monarchy, but all Government: as was evident in the caſe of the Rebellious Houſe of Commons, in King *Charles* the Firſt's time, who prided themſelves ſo much with the Title of Repreſentatives; and by pretext of that and the Aſſiſtance of their Army, having unyoked themſelves from all Subjection to their Lawful King, and diſengaged themſelves from their dangerous and uſeleſs Collegues, the Lords (as they then voted them) after ſome while they loſt their Honour and Reverence with their own Army, who then would be the People, and pulled them out of their Houſe; juſtly charging them with a deſign to perpetuate themſelves. And ſo the Tyrannical Supremacy was exerciſed by *Cromwell*, and his Council of Officers awhile, and after by himſelf, and his mock-Repreſentatives, by Councils of State and Safety, and ſuch new Names and Powers, as our Laws never heard of; and all this under pretence that they Acted by the Peoples Authority and ſuffrage; and all the ſad Devaſtations of that Age reſulted from the confiding ſo much in the pretended Repreſentatives of the People. Which (*a*) one ſome Years before the ſad

(*a*) *England's* Univerſal Diſtraction, *p.* 4.

ſad Cataſtrophe, plainly foretold; tho' like belief was given to him, as of old to *Caſſandra*. His Words are, That the ſo much exalting the Power of the Repreſentatives, was firſt to deſtroy the King by the Parliament, and next the Parliament and Kingdom by the People. Thus ignorant Politicians that build upon ſuch Quick-ſands, ſoon live to ſee their *Inſanæ Structuræ* ruinouſly fall about their Ears.

Thirdly, Whereas the Advocates for the Repreſentatives, would gladly have poſſeſſed the People that they could rely upon none ſo ſecurely and ſafely, as upon thoſe they had themſelves choſen; they being leſs ſubject to private ends and affections, than any particular man, ſuch a Body being not likely to counſel or conſent to any thing, but what is publickly advantageous.

It is to be conſidered, that it is a falſe *Poſtulatum*: Such a Body being but an Aggregate of particulars, may have as many private ends as any other number of Subjects; it being well known, that Communities themſelves are ſubject to dangerous Inclinations from private Incitements; and the Repreſentatives ſubject to miſleading Factions, and Ambitions of private Men; and by coalition of Parties (when they fall into deſigns) they are moſt dangerous and fatally violent: and tho' it may, at firſt View, ſeem to be repugnant, that an Univerſality ſhould have private ends; yet ſeeing it is not the number of Agents, but the capacity in which they act, and the quality of the Actors, and the coherence or incoherence of what they purſue (with the publick end and weal) which makes the Actions of men public or private: It muſt needs follow, That if without Authority, or out of the way of Public Ordinances, men purſue any thing, though the whole Community concur in the purſuit; yet it is all of the nature of a private Action, and done to a corrupt and private end.

Becauſe the Author of ſome Obſervations upon ſome of K. *Charles* the *1ſt.* Meſſages, was reputed the great Champion of the two Houſes, I ſhall content my ſelf with culling out ſome of the daringeſt aſſertions, he and ſome other of their *Triarii* uſed, and apply ſuch of thoſe Anſwers and Reaſonings, as the Learned and Loyal offered then againſt them, though they could not be heard, while the Torrent bore all down the ſtream. The hideous noiſe of Tumults, and after of Drums, Trumpets, Cannons and Fire-Arms huſhed and ſilenced all the ſtill voice of Law and Reaſon: But now it is to be hoped, when Mens Eyes are unſealed, the Mask and Vizard dropped or pulled off, the fatal Conſequences of ſuch pernicious Principles throughly manifeſted, and the loud Thunder of the Two Houſes Ordinance allayed, mens Spirits will be better fitted to hear them refuted.

Why Reaſon and Law were not hearkned to by the Advocates of the Long Parliament.

Beſides what I have endeavoured to anſwer before, concerning the Authority of the Repreſentative, which they would make an Aſſembly; in which the People, in underived Majeſty, are by theſe Proxies convened to affirm an Imaginary Power, ſuppoſed

ſuppoſed to be theirs originally, and in ſuch a convention to be put in execution: I ſay beſides this, which in ſeveral places I have refuted, They filled all their Declarations, Meſſages and Treatiſes, when they were contriving the ſetting up the Commons Houſe Topmoſt, to prove, That they were a Body that was not eaſily corrupted, byaſſed, tempted, or prevailed upon, to Act any thing but what was the beſt for the Peoples advantage. Therefore I think fit in many particulars to ſhew, how ſuch Bodies may be warped to ſiniſter ends, and eſpecially how that Houſe not only deceived, but tyrannized over, the whole Nation.

Private (*b*) Quarrels and the memory of former Sufferings may work upon ſome; diſcontent and envy at other mens preferment may tranſport others; the fear of the laſh, and deſire to ſecure themſelves have forced ſome to perſonate a part; great Offices and Honours have been a Pearl in ſome Mens Eyes to hinder their ſight; others have been like Organ Pipes, to whom the wind of popular Applauſe hath only given a ſound; others who have premeditated their Parts before their deſign was diſcovered, have upon ſome pretences or other (ſuppoſe of an unlawful Election, being Monopoliſts, Abhorrers, or ſuch like) got thoſe excluded by Vote, whom they conceived to be likely to oppoſe their deſigns. The bewitching Power of Oratory prevails upon many. In others there is a Speechleſs Humour of following the Drove. Can we not eaſily conceive ſeveral of this Body may be ambitious, which would prompt them to alter the old way of beſtowing Offices, and collating of Honours? ſo by diſſervice as well as ſervice in Parliaments, ſome Men have obtained Honours, Offices and Eſtates, finding it a good way to get preferment, by putting the King upon neceſſity of granting. Good Woodmen ſay, That ſome have uſed Deer-ſtealing as an Introduction to a Keepers place. So we have ſeen a Non-conformiſt's mouth ſtopped (I might inſtance in other Profeſſions) with a good Benefice; whereas, before he was ſatisfied, he could gape as wide as his Neighbours. Others by more oyly ways ſlip into Preferment; for Covetouſneſs and Ambition will ſail with any Wind. The Covetouſneſs of the Members of the long Parliament by woful experience was found inſatiable; witneſs their Voting for one anothers Offices, Governments, ſatisfaction for their loſſes out of Delinquents Eſtates, ſharing the Kings Lands and Revenue, the Biſhops, Deans and Chapters Lands, and the Eſtates of the Royal Party: hence together with the itch of Arbitrary rule, they drew the determination of Cauſes out of the ordinary Courts of Juſtice, before their Houſes and Committees of them, and in every County had their Sub-committees to Tyrannize over the People and fleece them.

(*b*) Anſwer to Obſerver, *p.* 130, 131. How Paſſions, Affections, Intereſts, and Factions may ſway Repreſentatives.

The Ambition and Covetouſneſs of Repreſentatives.

Their cruelty appeared in their erecting High Courts of Juſtice, Major Generals, and other Arbitrary Courts, where many a Loyal and brave man, for ſerving his King, againſt ſuch Rebels,

The Cruelty of the Long Parliament.

Rebels, either loſt his Life or his Liberty and Eſtate; and when they were the gentleſt, yet they could ſhow hatred enough, by Impriſoning, upon I know not what ſuſpicion, and at leaſure proſecuting ſuch as they had a pique againſt.

The Partiality.

The partiality of Members in ſuch Conventions are very frequent, in ſhielding their friends from being queſtioned, though their Corruptions were notorious to all the World. So in the fatal Parliament of 1641. a Monopoliſt, if a Loyal man, was ſure to be expelled the Houſe; but if a favourer of the Cauſe, he was never recriminated with that or any other by-paſt or preſent ill diſpoſition.

In ſuch Aſſemblies there often happen one ſort of People, who are always repreſenting grievances, complaining of Male-adminiſtration, troubling the Church and State, ſhaking up the Lees and Dregs in the richeſt Veſſel of Wine, theſe have learned to catch Eels.

The Corruptneſs of the *Roman* Senate.

Tacitus notes the corruptions of the *Roman* Senate, which neceſſitated the change of that State into a Monarchy under *Auguſtus*, fully, ſignificantly, and conciſely after his manner, *Suſpecto Senatus Populique imperio ob certamen Potentium, avaritiam Magiſtratuum, invalido legum auxilio, qua vi, ambitu, poſtremo pecunia turbabantur.* The Provinces obſerving in this Supremacy of the Senate and People, the conteſts of the moſt Powerful, the Covetouſneſs of the Magiſtrates, the feeble help the Laws afforded (by the Arbitrarineſs of the Senate, we may preſume) by what force and moyen; and laſtly, how all things were diſtracted by Bribery, they were the more eaſily induced to admit of one Soveraign. Theſe particulars were moſt obvious in the fatal Houſe of Commons.

Of cunning and deſigning Men.

Beſides theſe things I have hinted at, in ſuch a body as we are ſpeaking of (where there cannot want men deſigning ſome dangerous Revolutions, for the eſtabliſhing their own greatneſs) though ſome few wiſe men may be apprehenſive of their deſigns, yet we know *maxima eſt pars artis celare artem.* Such contrivers will be ſure by all imaginable Arts to conceal their intentions, and obtain an Aſcendent over the Judgment of the groſs Body, who either are not ſo quick-ſighted, or aiming at no ſuch things themſelves, judge others candor by their own, and ſo by their helps the deſigners may carry the Vote againſt even ſuch as penetrate further into the aims of the Contrivers, than the Majority do; ſo that thoſe that have good ends may be hoodwinked by others whoſe ends are worſe, and private ends will ſteal upon well affected: for all grand Conſpiracies are veiled under the Mask of Reformation, of removing Grievances and evil Counſellors. Gallant and vertuous actions do not more often ingratiate men with ſuch a mixed body, than a rolling Tongue, a precipitate Head, vain-glorious profuſion, oyly inſinuations, feigned devotions, ſufferings (though deſerved) from Superiours, and above all, oppoſition to the preſent State.

Fallit enim vitium ſpecie virtutis & umbra.

The ſpecious Pretences of the Long Parliament.

So the memorable long Parliament of 1641. by the ſpecious pretences of redreſſing Grievances, taking care of the Public, and

and particularly of the Liberty of the Subject and their Priviledges, together with vehement Expreſſions of their Reſolutions of Eſtabliſhing the Kings Throne, upon more firm foundations of the peoples Hearts and Affections; by inſenſible Screws wound themſelves into the credit of Patriots, and being thereby able to carry a numerous party with them in all their Votes, by little and little made ſuch encroachments upon the Soveraignty, that having undermined it, paſt ſupport, they took the advantage of its fall and ruine (out of the ſame ſpecious pretence, that the Commonwealth might ſuffer no detriment) to propoſe their long deſigned Model of Government, not as by them forethought on, but as a neceſſary expedient to accompliſh the end (as they pretended) they had all this while been aiming at, *viz.* the Peoples proſperity, which ſtill they endeavoured to make the World believe they were moſt zealous for: when God knows, the upſhot of all was the total diſſolution of the beſt conſtituted Government, and the Eſtabliſhing themſelves a fattened Commonwealth out of the rich ſpoils of Monarchy.

Yet theſe very men were they who ſome years before poſ- Their Hypocritical Promiſes.
ſeſſed as many as they could delude, with an opinion, that none knew better, nor affected more the ſweetneſs of ſo well ballanced a Monarchy, than they; and that the Kings juſt Authority was Sacred to them that they would make him more rich and glorious than any of his Predeceſſors. The Obſerver told the World, That it had been often in the Power of former Parliaments, to load the Government with greater Fetters and Clogs, but they would not; and that change of Government could not be in their deſires, becauſe the advantage of the Lords and Commons in the State was ſo great, that no change of Government could better them, except each one could obtain an hereditary Crown. But theſe were but vain flouriſhes and empty aiery offers: ſucceſs altered their Principles, and they were ill troubled to find out excuſes and evaſions after the Murther of the Bleſſed King, and change of Government, for theſe their ſo hypocritical Declarations. From all which I ſhall only deſire that Poſterity may be cautious how they credit the truth of thoſe, who in ſuch Conventions are the moſt active for any Innovation, if they ſee that they zealouſlieſt pretend ſome greater happineſs to the People, by leſſening the Authority of the Crown. It is reported of *Frederick* the Emperour, that (c) *Æneas Sylvius de diætis Fred. Imp.* in his Speech to the Senators, he deſired them before they entred into the Houſe of their Aſſembly, they would leave two things behind them, and then they would give right Judgment; and being asked what thoſe were, he told them, Counterfeiting *Simulatio & diſſimulatio.* and Diſſembling.

Another of their Arguments, for the preference of the How many Counſellors may miſlead.
Houſes Counſel before all other Councils, was, that many Eyes of ſo many choice Gentlemen from all parts, ſee more than fewer; which Sophiſm eaſily midwived in the concluſion,

that then the two Houſes judgment of Affairs was to be preferred before the King and his Privy Councils, and the Commons before the Peers; and by a parity of Reaſon (though they deſired not it ſhould be urged ſo far home) that the body of the People was to be preferred before the Commons Houſe, which might be urged upon as common a Proverb, *That Byſtanders ſee more than Gameſters.*

But who are ſo blind as thoſe that will not ſee? Thoſe very Seers if they would have made uſe of their Eyes, to have peruſed the Hiſtories of former Ages, on what ſpecious pretenſions Rebellions had begun, and how the Laws had ſettled the Government in an unparallel'd ſecurity of the Peoples Rights, as well as the Prerogative of the Crown, or by ſerious conſideration foreſeen the certain and inevitable miſeries that would follow the weakning of the Crown, and the neceſſitating the King for his defence to take up Arms: theſe quick-ſighted Commoners might have prevented all thoſe Calamities that enſued.

The Elected like the Electors.

Whoever conſiders how eaſie it is to poſſeſs a People with prejudices againſt the Government (of which elſewhere I muſt enlarge) will ſoon find that it is no difficult matter to have ſuch Elections of Members as were like to be of the ſame perſwaſion with the Electors; So that in ſuch caſes, it is not to be wondred at, that a majority of Votes might be oppoſite to more judicious and foreſeeing Members judgments; neither is the Maxim univerſally true, for it muſt be *cæteris paribus*, if all things be alike. For it is not ſufficient for an Adviſer to ſee, unleſs he can let another ſee by the light of Reaſon. A man ought not implicitely to ground his Actions upon the Authority of other mens Eyes, whether many or few, but of his own. One Phyſician may ſee more into the ſtate of a mans body than many Empiricks. One experienced Commander may know more in Military Affairs than ten freſh-water Souldiers. One old States-man in his own Element is worth many new Practitioners. One man upon a Hill may ſee more than an Hundred in a Valley. And who will deny but among an Hundred, one of them may have a ſtronger Eye, and ſee clearer and further than all the Ninety Nine? So one *Paphnutius* in the Council of *Nice*, ſaw more than many greater Clerks. And it is no new thing to find one or two men in the Parliament change the Votes of the Houſe. Therefore nothing is got by this way of arguing, though it be one of the plauſibleſt, and moſt improveable of any of the Topicks they chooſe. And if we could be ſure that all the Members of ſuch Aſſemblies were free from all the imperfections ſuch are liable to, much might be yielded to it.

All theſe Arguments were uſed for that ſole end, that they might poſſeſs their Party with the reaſonableneſs of their deſires to the King, that he would implicitly yield up his reaſon to the guidance of their Councils.

Concerning the Negative Voice.

They were not ſo frontleſs at firſt, as poſitively to deny the Kings negative Vote in Parliament, that had never been doubted,

doubted, and there is good reaſon it ſhould be a moſt ſure Fundamental of the Government, ſince nothing can be Statute-law but that to which the King aſſents, *Le Roy le veult*. For who can be ſaid to will that hath not the Power to deny? But they affirmed that in Caſes extraordinary, when the Kingdom was to be ſaved from ruine, the King ſeduced, and preferring dangerous men, it was neceſſary for them to take care of the Publick. And then the Kings denying to paſs their Bills, was a deſerting of them; Otherwiſe they alledged Parliaments had not ſufficient Power to reſtrain Tyranny, and ſo they boldly affirmed they had an abſolute indiſputable Power in declaring Law; and (as their Obſerver words it) they are not bound to Precedents, ſince Statutes cannot bind them, there being no obligation ſtronger than the Juſtice and Honour of Parliaments. And to ſumm up all, he tells us, if the Parliament (meaning the two Houſes) be not vertually the whole Kingdom it ſelf; if it be not the ſupreme Judicature, as well in matters of State as matters of Law; if it be not the great Council of the Kingdom as well as of the King to whom it belongeth, by the conſent of all Nations, to provide in all extraordinary caſes, *ne quid detrimenti capiat Reſpublica*: let the brand of Treaſon, ſaith he, ſtick upon it. Indeed becauſe by all theſe moſt falſe, and impious aſſertions, and thoſe horrid Acts built upon them, they brought ſo great a ruine to the Kingdom, they are and ever will be (unleſs a *Platonick* year return again) branded with Rebellion in the higheſt degree.

Si vultis ſcire an velim, efficite ut poſſim nolle. Seneca.

Objection, That in Caſes of Extraordinary neceſſity, the Houſes to have Power to ſecure the People from Tyranny.

To anſwer this Accumulation of Treaſonable Poſitions (for ſuch I hope I may call, in ſome ſence, what is againſt the Kings Crown and Dignity) is no ways difficult from the diſcourſe of right conſtituted Parliaments: For thoſe of them that carry any ſhew of Reaſon, are ſuch only as may be underſtood of Acts of Parliament compleated by the Royal Aſſent; but being ſpoken of either or both Houſes in oppoſition to the King, they are moſt falſe, as I ſhall ſhew in particular.

Anſwer.

For Firſt, If the two Houſes are not bound to keep any Law, no man can accuſe them of breach of any: What obligation can Juſtice lay on them who by a ſtrange vertue of Repreſentation are not capable of doing wrong? But it is well known that Statutes ſtand in full force to the two Houſes, as being not void till repealed by a joynt conſent of the King and the two Houſes. It would be much for the credit of the Obſervers deſperate Cauſe, if he were able to ſhew one ſuch Precedent of an Ordinance made by Parliament without the Kings aſſent, that was binding to the Kingdom in nature of a Law. Our Kings can repeal no Laws by their own Prerogative, though they may ſuſpend the Execution. It ſeems the Houſes would have Power to do both; and our Author in another place, thinks it ſtrange that the King ſhould

assume or challenge such a share in the Legislative Power to himself, as without his concurrence the Lords and Commons should have no right to make Temporary Orders, for putting the Kingdom into a Posture of Defence. These were strange Phrases never heard before by English Ears. Our Laws give this Honour to the King, That he can joyn or be sharer with no man. The King like *Solomon*'s true Mother, challengeth the whole Child, not a divisible share, but the very life of the Legislative Power. The Commons present and pray, the Lords advise and consent, the King Enacts.

The Houses have no Power to declare Law.

Secondly, As to their claiming an absolute Power in declaring Law, it is as bold and false an Assertion as the other, when spoken of the two Houses. They may vote in order to a new Bill, the explaining or repeal of any Law formerly made, or prepare a Bill for any New Law, and that is all they can do; but authoritatively to declare any Law, is most contrary to the Constitution of the Houses, and never was adjudged one of their Privileges.

Thirdly, As to the Justice and Honour of a Parliament, when the State is in quiet, and the Conventions only for making wholsome Laws for the Publick weal, there are no Factions in Court or Country, no private Intriegues to be managed, the People neither uneasie nor discontented; then it is to be expected, That none but the wisest, and wealthiest of the Gentry will be chosen Members of that August Assembly, and their Justice and Honour will be conspicuous in all their Actions. But have we not known Houses of Commons composed of other kinds of Persons, who have voted their own Justice and Honour to be, to imprison their fellow Members, and fellow Subjects in an Arbitrary way? How (*d*) could a generous Soul, conscious to himself he had transgressed no Law, kneel at the Bar of such a House with the same submission, as if he believed the Speaker infallible, and every Member an Angel!

(*d*) Address, *part* 3. *p.* 121.

Objection, That if the King have a Negative Voice, there will be no need of Parliaments.

But the Observer, and his Pewfellows urge, That if the Houses can do no Act for publick good without the King's consent, and if the King may reject their Counsels and Advice; it were needless to put the Country to the charge of chooSing Members of Parliament. And if the King may prefer other opinions before Parliamentary Motives, then Parliaments are vain and useless helps, Princes are unlimited, and the People miserable.

Answer.

These Objections are of such an odious nature, That no good Subject can take delight in them, whose duty is to pray for the like consent among the several Orders of the Kingdom, as is supposed to be among the several Orbs of Heaven: The King undoubtedly the *Primum movens*; the Great and Privy Council the lower Spheres.

The usual (but not the only) form of the Kings Answers to such Bills as they were not willing to pass, *Le Roy s'avisera*, proves

proves, (e) That after the advice of this his Great Council, he is yet at liberty to adviſe further with perſons or occaſions, as his own Wiſdom ſhall think meet. But theſe Authors will by no means take notice, That the uſe of Council is to perſwade, not to compel; as if a Man in buſineſs of great concernment might not very prudently conſult with many Friends, and yet at laſt follow the advice perhaps of one, if it appear more proportionable to the end he aims at.

(e) Anſwer to Obſervations, *p.* 56.

If it were becauſe they are a more numerous body, therefore their Counſel is upon that account to be yielded to; then the liberty of diſſenting may be denied to the Houſe of Peers, in compariſon of the Houſe of Commons; and to that Houſe too in compariſon of the People: and ſo both King, Lords and Commons are voted out of Parliament.

Beſides Natural Wiſdom and Fidelity, there is a thing called Experience, of high concernment in the managery of Publick Affairs. He that will ſteer one Kingdom aright, muſt know the right Conſtitution of all others, their Strength, their Affections, their Counſels and Reſolutions, that upon each different Face of the Skie, he may alter his Rudder. The beſt Governments have more Councils than one: One for the Publick Intereſt of the Kingdom, another for the Affairs of State, a Council for War, and a Council for Peace.

Let them be as wiſe and faithful Counſellors as the Obſerver pleaſeth, only let them be but Counſellors. Let their concluſions have as much credit as the premiſſes deſerve; and if they can neceſſitate the Prince by weight of Reaſon, and convincing Evidence of experience, let them do it on Gods name. But it is not to be done upon the Authority of a bare Vote, as I think all unintereſted perſons are ſatisfied in the Votes of the Houſes in 1641. about the Militia, Church-Government, and the voted Nineteen Propoſitions, or the late Votes about the Bill of Secluſion, the Repealing of the branch of the Statute of Queen *Elizabeth* againſt Proteſtant Diſſenters, and the Loans upon the Kings Revenue. There are other ends beſides Counſel, for which Parliaments are called, as conſenting to new Laws, furniſhing the Public with Moneys, and maintaining the Intereſt of the Government and liberty of the Subject: from the removing one ſocial end, to inferr that an Action is ſuperfluous, deſerves no anſwer but ſilence and contempt.

Neceſſe eſt ut Lancea in libra ponderibus impoſitis deprimi, ſic animum perſpicuis cedere.

This ſhould teach the Electors Wiſdom not to chuſe ſuch as have Factious Bents, or are not truly qualified in their Allegiance to their Prince; or Malecontents, who render ſuch Conventions uſeleſs to the Publick Ends of Government, and the Peace, Tranquillity, and Proſperity of both Prince and People.

Concerning the Coronation-Oaths of the King of *England.*

Becauſe the Long Parliament Writers would have no Stone unturned, nor any ſpecious Argument uninforced, that might bring the King to their Lure, to conſent to what they propoſed; they endeavoured to make the World believe, that the King was bound by his Coronation Oath to paſs all ſuch Bills

as

as they presented, or tendered to him, grounding, as Mr. *Prynne*, and others alledged, on a promise of the Kings at his Coronation, to grant and keep the Laws and Customs which the Commonalty shall chuse. Before I come to give the particular Answer, I think it not unfit to take this opportunity to give a full account of the Coronation Oaths of our Kings, and how the same from Age to Age were varied, by which the Ingenious Reader will find, what the respective Kings by their Oaths did promise.

That I may deduce, as high as I have yet found, the Original of Soveraign Princes taking Oaths at their Coronations; it may be noted, that the first Emperor that was Crowned, and had any Coronation Oath prescribed, was (*f*) *Anastasius* the Greek Emperor, who being elected by the Senate and Soldiers about *Ann.* 486. *Euphemius*, Patriarch of *Constantinople*, (suspecting him to be addicted to the Heresy of *Eutychius* and the *Manichees*,) would not consent to his Coronation, till he should deliver him a Writing under his Hand, ratified with his Oath, wherein he should plainly declare, That if he were Crowned Emperour, he would maintain the true Faith, and Synod of *Chalcedon* during his Reign, and bring in no Novelty to the Church of God. This Writing, ratified with his Oath, *Macedonius* the Treasurer was to keep; and after he was made Patriarch, the Emperor demanded it, and said, It was a great discredit unto his Subjects, that his Hand-writing should be kept to testifie against him, or that he should be tied to Pen and Paper.

(*f*) *Evagrius Hist. Eccles. lib.* 3. *c.* 32. Who first took a Coronation-Oath.

There is no mention of any Coronation Oath used from thence, to the Year 804. that (*g*) *Stauratius*, (Son to *Nicephorus*, slain in his Wars against the *Bulgarians*) being declared Emperor by some: *Michael Curopolata* was adorned by the Patriarch, with the *Diadem*, a Writing before being desired, in which he promised to violate none of the Statutes of the Church, *&c.* Which is the first Precedent of a Promise, not an Oath, demanded from, or given by any *Roman* King for confirming the Laws of the Church, *&c.*

(*g*) *Eutrop. lib.* 24. *p.* 145, 146. *Zonar. Annal. tom.* 3. *fol.* 142, 143. *Imperatorio Diademate est ornatus, postulato prius scripto quo promitteret se nulla Ecclesiæ statuta violaturum.*

The first Emperor Crowned at *Rome* by any Pope, (*h*) was *Charles* the Great, *Anno* 800. but without an Oath; and *Henry* the Fifth (*i*) refused to take any Corporal Oath, saying, That an Emperor ought to Swear to none: for that Oath, *i. e.* of Fealty, ought to be made to him from all.

(*h*) *Onuphr.*

(*i*) *Dicens Imperatorem nemini jurari debere, cum juramentorum sacramenta ab omnibus sint sibi adhibenda.* Hermold. Chron. Scl. l. 1. c. 40. Sim. Dunelm. 232, 237.

I shall not with Mr. *Prynne* (in his Epistle Dedicatory to his third Tome of Chronological Vindication,) meddle with the dispute, how the Canonists argue from the Popes Crowning of Emperors and Kings, that they acquire a Spiritual and Temporal Monarchy over them, as their Sovereign Lords. For that however some may hold the Doctrine, yet it is exploded by most.

As to the Crowning and Anointing of some *British* and *Saxon* Kings, I must refer the Reader to Mr. *Selden* (*k*), and Mr. *Prynne* in the forecited Epistle.

(*k*) *Tit. Hon. part* 1. *c.* 8. *fol.* 149.

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The first of our Kings that is recorded in History to have taken an Oath at his Coronation, was *Canutus*; of whom *Sim. (l) Dunelmensis*, and others give this account, That after the death of *Æthelred*, the Bishops, Abbats, Dukes, and the Nobles of *England*, and the most part of the men of the Kingdom, as well of the Clergy as Laity, met together with one consent at *Southampton*, and chose *Canutus* for their King, and swore Fealty to him: to whom he also swore, that according to God and the World, (that is the Laws of God and the Kingdom) he would be a faithful Lord unto them. Mr. *Prynne* here notes, that Usurpers more frequently used to take such Oaths than lawful hereditary Kings. So when the Citizens of *London*, and some few Noblemen, with unanimous consent, chose (*m*) *Edmond*, called *Ironside*, the eldest Son of *Æthelred*, who was right Heir, there is no mention of an Oath. So when *Harold* reputed Son of *Cnute* was Crowned, there is no Oath recorded, nor of any taken by *Hardicnute*, right Heir of *Cnute*.

(l) *De Gestis Regum Ang. col.* 173. *Wigorn. Chro.* 384.

Quibus ille juravit, quod & secundum Deum & secundum Seculum, fideles esse vellet eis Dominus. King *Canutus* his Oath.

(m) *Clitonem Eadmundum unanimo consensu in Regem levavere.* Matt. Westm. p. 410, 411.

So, *Anno* 1041. (*n*) *Edward the Confessor, annuente Clero & Populo, Londoniis in Regem eligitur*, and was Crowned, Anointed, and Consecrated; yet not any of our Historians, besides *William* of *Malmsbury de gestis Regum, Lib.* 2. *c.* 13. p. 80. speaks of an Oath, who saith, that he being sent for by the Nobles, upon terms proposed to him by Earl *Godwyn*, there was (*o*) nothing that King *Edward* did not promise, by reason of the necessity of the time; so that Faith was given by either Party, and what was desired, he confirmed by Oath: but this was in their private Consultation. Yet Archbishop (*p*) *Stratford* in his Epistle to King *Edward* the First, saith, that St. *Edward* being raised to be King of *England*, first Swore inviolably to keep the Laws of *Canutus*.

(n) *Flor. Wigorn. Chro.* p. 404. *Edward the Confessor's* Oath.

(o) *Nihil erat quod Edwardus pro necessitate temporis non polliceretur. Ita utrinque fide data quicquid petebatur, sacramento firmavit.*

(p) *In Regem Angliæ sublimatus prius juravit se Leges Canuti inviolabiliter servaturum.* Spelm. Conc. tom. 2. p. 342.

We find no Coronation Oath of *Harold* mentioned. *Matt. Westm. Flor. Hist.* p. 433 saith, that *extorta fide a Majoribus, Capiti proprio imposuit Diadema*; that having exacted Fealty of the great Men, he put the Crown on his own Head: and after when Crowned by Archbishop *Alfred*, he took no Coronation Oath; but as my Author saith, *Leges æquas cœpit condere.*

William the Conqueror's Oath.

(r) *Flo. Wigorn. Chro.* p. 412. *Hoveden part. Annal. prior.* p. 450. *Stubs Acta Pontif.* col. 1702.

As to King (*q*) *William* the Conqueror; *Aldred* Archbishop of *York* Crowned him, and imposed on him an Oath. The words of the Authors are, *Ipsa nativitatis die ab Aldredo Ebor. Archiepiscopo, apud Westmon. in Regem totius Angliæ sublimiter Coronatum immixit, & consecravit honorifice*: Having before (as the Archbishop required from him) before the Altar of St. *Peter* the Apostle, before the Clergy and People, by Oath promised, That he would defend Holy Church, and the Governours of it (which Clause occurs not before) and likewise govern all the People subjected to him, with a Just and Regal Providence, and appoint and hold right Law, and wholly remove and interdict all Rapines, and unjust Judgments.

Coram Clero & Populo jurando promittere se velle sanctas Ecclesias & Rectores earum defendere, nec non & cunctum populum sibi subjectum juste & Regali providentia regere, rectam Legem statuere & tenere, Rapinas injustaque judicia penitus amovere & interdicere. Sim. Dunelm. col. 195. num. 43.

The

The Oath which he took to obſerve St. *Edward*'s Laws, was afterwards, *Anno* 1072. when he entring into a Parly with the *Engliſh* Nobility (who intended to have ſet up *Edgar Atheling*, becauſe King *William* had violated their ancient Laws, and introduced new ones) he, by the Advice of Archbiſhop (*r*) *Lanfrank*, Swore that *bonas & antiquas Leges Regni, ſc. Leges quas Sancti & pii Angliæ Reges, & maxime Rex Edwardus ſtatuit, inviolabiliter obſervare.* Only *William* of *Malmsbury* (*s*) ſaith, that *Aldred* the Archbiſhop would not conſecrate him, before he had exacted from him, before all the People, this Oath, That he would modeſtly deport himſelf towards all his Subjects, and with an equal Law treat the *Engliſh* as he did the *French*.

(*r*) *Matt. Paris vita Fritherici Abbatis* 13. *St. Albani, p.* 30.

(*s*) *Modeſte erga ſubjectos ageret, & æquo jure Anglos quo Francos tractaret.* De Geſtis Pontif. lib. 3. fol. 154.

King *William Rufus*'s Oath.

William Rufus promiſed to *Lanfranck*, (*t*) If he were King, in all his Affairs, through all his Kingdom, to preſerve Juſtice, Equity, and Mercy, and to defend the Liberty and Security of the Church in Peace, againſt all. *H. Huntingdon, Lib. 7. fol.* 213. *b.* and *Hoveden, Anno* 1088. *fol.* 264. *b.* ſay, That when he needed the help of the *Engliſh*, he promiſed them ſuch deſirable Laws, or better than they would chuſe. But *Malmsbury* and others ſay, he kept them not; for Uſurpers (ſuch as he was) rarely obſerve the Laws, or their Promiſes, further than they ſerve their own Intereſt. Therefore Mr. *Prynne* notes that the Promiſe *Eadmerus*, and (*u*) *Simeom Dunelm.* mention, was before he was King; and the other Promiſe was, when moſt of the *Norman* Nobility, except the Archbiſhop *Lanfranck*, deſigned to make *Robert* his Brother King; and then he called them together, and then told them, If they would be Faithful to him, (*w*) *Meliorem Legem quam vellent eligere, eis concederet, & omne injuſtum Scottum interdixit.* (*x*) *Huntingdon* ſaith the promiſed them *exoptabiles leges*, and that they ſhould have their Woods and Hunting free.

(*t*) *Juſtitiam, æquitatem, & miſericordiam ſe per totum Regnum, ſi Rex foret, in omni negotio ſervaturum, pace libertatem & ſecuritatem Eccleſiæ contra omnes defenſurum.* Eadmerus Hiſt. Novel. lib. 1. p. 13, 14.

(*u*) *Col.* 214.

(*w*) *R. Hoveden, part.* 1. *Annal. p.* 264. *b. num.* 20.

(*x*) *Lib. 7. fol.* 213. *b.*

King *Henry* the Firſt's Oath.

It is recorded of *Henry* the Firſt, that having gathered to *London* the Clergy of *England* and all the People, he promiſed them an amendment of the Laws, with which they were oppreſſed in the time of his Father, and his Brother lately deceaſed, that he might obtain their (*y*) good Wills to his Promotion, and that they might receive him for their King and Father: to which the Clergy and all the Nobility anſwered,* That if with a willing Mind he would grant them, and with his Charter confirm all the Liberties, and ancient Cuſtoms, which flouriſhed in the Kingdom, in the time of the Holy King *Edward*, they would conſent to him, and unanimouſly conſecrate him King; and he freely yielding to this, and affirming by his Oath that he would do it, he was conſecrated King, the Clergy and People favouring it.

(*y*) *Ut animos eorum in ſui promotionem accenderet.*

* *Si animo volenti ipſis vellet concedere, & charta ſua communire illas libertates & antiquas conſuetudines quæ floruerunt in Regno tempore Sancti Regis Edwardi.* Mat. Paris 250. *n.* 53. *Hiſt.* Novel. lib. 3. p. 55.

Eadmerus ſaith, That in *ipſo conſecrationis die, bonas & Sanctas omni Populo Leges ſe ſervaturum, & omnes oppreſſiones & iniquitates, quæ ſub fratre ſuo emerſerunt, in omni ſua dominatione tam Dei Lege, quam in ſecularibus negotiis prohibiturum, & ſubverſurum, ſpoſponderat; & hæc omnia Jurisjurandi Interjectione formula*

per

per totum Regnum divulgata ire præceperat, and when he was Crowned, he granted the Laws recited by (z) *Matthew Paris*, to be held in his Kingdom, for the exalting of the Holy Church, and Peace of his People: which Laws being at large recited by *Matt. Paris*, may be perused by the Inquisitive, wherein he will find how far the old Laws were confirmed, and what a Foundation there was laid for *Magna Charta*.

(z) *Diademate insignitas has libertates subscriptas in Regno ad exaltationem Sanctæ Ecclesiæ & pacem Populo tenendam concessit.* Mat. Paris Hist. p. 46. num. 40. ult. Edit.

King *Stephen*'s Oath.

Concerning King *Stephen*, (a) *Malmsbury* saith, That *Henry* his Brother, Bishop of *Winchester*, was a great help to his obtaining the Crown, having great hopes that he would follow his Grandfather, King *William*'s Steps, in the Government of his Kingdom, especially in matters of Ecclesiastical Discipline; therefore he saith, *William*, Archbishop of *Canterbury*, having exacted a solemn Oath from him, of granting and preserving the Liberty of the Church: the Oath it self is long, and the Immunities to the Church many; those to the Laity are conceived in these words, *Omnes Exactiones, & Meschéningas, & Injustitias, sive per Vicecomites, vel per alios quoslibet male inductas, funditus extirpo. Bonas Leges, & Antiquas, & justas Consuetudines, in Murdris, & Placitis, & aliis Causis observabo, & observari præcipio & constituo.* *Malmsbury* saith, That the King swore according to the tenor of the Writing he there produceth, Dated at *Oxford*, *Anno Dom.* 1136. 1 *Regni*.

(a) *Hist. Novel. p.* 101. *b. num.* 40. *Vide Mat. Paris, p.* 62. *num.* 35.

King *Henry* the Second's Oath.

I find no mention of an Oath taken by K. *H.* 2. at his Coronation; but (b) *Brompton* saith, that he confirmed the Charter of his Grandfather King *Henry* the First, and that he was sollicitous, *ut Lex quæ extincta videbatur, paulatim exsurgeret*: and *Matt. Paris* (c) saith, That *Anno* 1172. he swore before the Cardinals, that he would abrogate all the evil Customs introduced in his time against the Church.

(b) *Chron. col.* 1043. *num.* 67.

(c) *Hist.* 1080, 1081.

We find that Pope *Alexander* (d) the Third Excommunicated several Bishops, and suspended the Archbishop of *York*, for his rash Presumption in the Coronation of a new King, in contempt of the Archbishop of *Canterbury*, to whose Office of ancient Right it was known to belong; and for that in the Coronation, according to Custom, there was no sworn Caution offered or exacted by them for the keeping of the Liberties of the Church: but afterwards (e) it is said to be confirmed by Oath, that the ancient Customs of the Kingdom (from which the dignity of the Church was in danger) should inviolably be kept in all time to come.

(d) *Gul. Newbrigensis lib.* 4. *c.* 25. *Gerv. Dorob. Chron. col.* 1413. *Matt. Paris, p.* 117.

(e) *Ut Regni consuetudines antiquas sub quibus dignitas periclitabitur Ecclesiæ, illibatæ debeant omni tempore observari. Hoveden. Annal. pars poster. p.* 518, 519.

King *Richard* the First's Oath.

The Solemnities of King *Richard* the First's Coronation are fully described by the Abbat of *Jorval*: (f) and as to his Oath, he saith that he swore and vowed (the Holy Evangelists, and the Reliques of many Saints being set before him) that he would bear Peace, Honour, and Reverence, all his Life, to God and the Holy Church, and its Ministers; and then he swore that he would exercise right Justice to the People committed to him: and after he swore that he would blot out, or abolish evil Laws, and perverse Customs, if any were in his Kingdom, and he would keep good Laws.

(f) *Rectam Justiniam exercebit in populo sibi commisso, leges malas & consuetudines perversas si aliquæ sint in Regno suo delebit, & bonas custodiet.* Brompton, col. 1158. num. 60.

King *John*'s Oaths.

I find that King *John* took an Oath as Duke of *Normandy*, that he would defend Holy Church and its Dignities in good Faith, without evil Intention, and would honour all the Ordained, and that he would destroy all evil Laws, if any were, and substitute good ones; the words (*g*) are, *quod ipse Sanctam Ecclesiam & ejus dignitates bona fide, & sine malo Ingenio defenderet, & ordinatos honoraret, & quod Leges iniquas, si quæ essent, destrueret, & bonas surrogaret.*

(*g*) *Matt. Paris, fol.* 165. *ult. Edit. num.* 27.

At his Coronation (*h*) he took another Oath, that he would love Holy Church, and the ordained of it, and would preserve it indempnified from the Incursions of the Malignant; and that the perverse Laws being destroyed, he would substitute good ones, and would exercise right Justice in *England*. Besides these, *Matth. Paris*, *p.* 189. of the old Edition, saith, That he was sworn by the said Archbishop *ex parte Dei & districte prohibitus, ne honorem hunc accipere præsumeret, nisi in mente habeat opere quod juraverat adimplere*; that is, On the part of God, by the Archbishop, he was strictly forbid, that he presume not to take this Honour, unless he had a resolution to fulfil in work, what he had sworn: To which the King promised, That, by the help of God, he would in good faith observe what he had sworn.

(*h*) *Quod sanctam Ecclesiam & ejus ordinatos diligeret, & eam ab incursione malignantium indemnem conservaret; & quod perversis legibus destructis, bonas substitueret, & rectam Justitiam in Regno Angliæ exerceret.* Idem, p. 166. num. 4. *Promisit se per auxilium Dei bona fide ea quæ juraverat servaturum.*

In the Fifteenth of his Reign he was forced by the Barons to take another Oath, (*i*) *Quod sanctam Ecclesiam ejusque ordinatos diligeret & manuteneret, contra omnes adversarios suos pro posse suo: quodque bonas Leges Antecessorum suorum, & præcipue Leges Edwardi Regis revocaret, & iniquas destrueret, & omnes homines suos, secundum justa Curiæ suæ judicia, judicaret: quodque singulis redderet jura sua. Juravit præterea Innocentio Papæ, ejusque Catholicis Successoribus, fidelitatem & obedientiam*: And that he would make restitution of those things he had taken away by reason of the Interdict. This Clause of restoring King *Edward*'s Laws (which had been disused from the time of the Conquest) being thus inserted in King *John*'s Oath, was after inserted into the Coronation-Oath of *Edward* the Third, and so continued.

(*i*) *Mat. Paris, Hist.* p. 229, 230.

The best Account of the Coronation-Oath of King *Henry* the Third, is in (*k*) *Matthew Paris*, That he swore before the Clergy and People, the Holy Evangelists and the Reliques of several Saints being laid before him, and *Joceline* Bishop of *Bath* reading the Oath, which was very little different from that which King *John* took, *Quod honorem, pacem & reverentiam præstabit Deo, & sanctæ Ecclesiæ, & ejus ordinatis omnibus diebus vitæ suæ*; and so word for word as in King *John*'s: only for *perversas consuetudines*, here is *iniquas consuetudines*.

(*k*) *Idem, p.* 243. *num.* 26.

The Oath of King *Henry* the Third.

It was in relation to the preceding Oaths, that (*l*) *Bracton* saith, The King ought at his Coronation, in the Name of *Jesus Christ* being sworn, to promise these three things to the People being his Subjects: First, To command, and to his power see it performed, that the Peace shall be kept to the Church, and

(*l*) 1. *Ut Ecclesiæ Dei, & omni populo Christiano vera pax omni suo tempore observetur.* 2. *Ut rapacitatem & omnes iniquitates omnibus gradibus interdicat.* 3. *Ut in omnibus judiciis æquitatem præcipiat & misericordiam.* Bract. lib. 3. de Actionibus, c. 9. fol. 107.

and all Chriſtian People in all his time. Secondly, That all Ravages and all Iniquities, in all degrees, ſhall be by him forbidden. Thirdly, That in all his Judgments he ſhall command Equity and Mercy, and that by his Juſtice all may enjoy firm Peace, *& per Juſtitiam ſuam firma gaudeant Pace univerſi.*

King *Edward* the Firſt's Oath not recorded.

That he took an Oath.

None of our Hiſtorians mention the Oath of *Edward* the Firſt, that I have met with, nor Mr. *Prynne*: Therefore I think it very probable that it was conceived in the ſame Form, as that of his Fathers and Grandfathers; for it is moſt certain that he took one, by the Expreſſions in ſundry of his Prohibitions, to the Legates of Popes, to Biſhops, and others in theſe Words: *Torpeſcere non poſſumus, quia exhæredationem quæ ſtatum Coronæ noſtræ contigit, ſicut ex Sacramenti vinculo adſtringimur, pro viribus evitemus, ne Coronæ & dignitatis noſtræ Jura depereant, ſtudioſam (m) nos debet operam adhibere; & ad ea manutenenda & conſervanda, eo potius debemus eſſe ſolliciti, quoad hoc vinculo juramenti teneri dignoſcimus & adſtringi*; that is, We cannot be ſlothful, becauſe we ſhould avoid to our power, our diſ-inheriting, which appertains to the State of our Crown, as we are tied by the Bond of our Oath; which to maintain and preſerve, we ought to afford our ſtudious help, leſt the Rights of our Crown and Dignity periſh; and we ought the more to be ſolicitous in this, as that we know our ſelves to be held and bound by the bond of the Oath.

(m) *Prynne*'s Epiſt. Dedicat. to the third Vol. of Legal Vindication.

Hitherto we find nothing of the *Vulgus elegerit*, beſides what is mentioned in King *William Rufus* his promiſe, That he would grant his Subjects a more deſirable Law, and better than they could chuſe; which is no ways to be interpreted of ſuch a choice as the Republicans would have underſtood.

The Oaths of King *Edward* the Second, and King *Edward* the Third.

Our Hiſtorians are generally ſilent what the Oath was that *Edward* the Second took, but it is to be found in the Clauſe Rolls of the *Tower* (*n*), 1 *E.* 2. in French thus, which I ſhall render into Engliſh as well as I can.

(*n*) *Cl.* 1 *E.* 2. *num.* 10. Alſo *Cl.* 1 *E.* 3. *m.* 24. *dorſo.*

SIRE, Volez vous granter, & garder, & per veſtre ſerement confirmer, au People d' Engleter, les Leys, & les Cuſtumes a eux grantes per les Anciens Rois d' Engleter, voz Predeceſſours droitas, & devotz a Dieu; & nomement, les Leys, les Cuſtumes, & Franchiſes grantz au Clergie, & au People, par le glorieus Roy Seint Edward, votre Predeceſſure?

Reſpons.

Jeo les grants & prometts.

SIR, Will you grant and keep, and by your Oath confirm, to your People of *England*, the Laws and Cuſtoms granted to them by the Ancient Kings of *England*, your predeceſſors righteous, and devout to God, and namely, the Laws, and Cuſtoms, and Franchiſes granted to the Clergy, and the People, by the glorious King St. *Edward* your Predeceſſor?

Anſwer.

I do grant and promiſe this.

Sire, Garderez vous a Dieu & a Seint Eglise, & au Clergie, & au Poeple, Pece, & accord en Dieu, entirement selons voſtre Poair ?

Respons.
Jeo les garderez.

Sir, Do you keep to God, and his Holy Church, and to the Clergy, and to the People Peace, and accord in God entirely, according to your Power?

Answer.
I shall keep these.

Sire, Freez (or perhaps *feres*) *vous faire, en tous voz Jugements, ovels & droit Justice, & discretion en misericorde, & verite a voſtre Poair ?*

Respons.
Jeo les fray.

Sir, Will you suffer to be done in all your Judgments, equal and right Justice, and Discretion, with Mercy and Truth according to your Power?

Answer.
I will do it.

Sire, Grantez vous a tenir & garder des Leys & les Custumes droitureles, le quels la Communate de votre Roiaume auras eslu, & les defenderz & inforciers al honeur de Dieu, a votre Poair ?

Respons.
Jeo les grants & prometts.

Sir, Do you grant to hold, and keep the Laws, and the Customs that are lawful, which the Community of your Realm shall have chosen, and defend, and enforce these to the Honour of God, to your Power?

Answer.
I grant and promise them.

The Oath of King *Richard* the Second. (*o*) *Cl.* 1 *R.* 2. *m.* 44.

Several Answers have been given to the Objection raised from this last Clause, as they found it in the Latin (*o*) Records; therefore, before I apply those, it is needful to note the Latin, which, as we find it 1 *R.* 2. was this, *Capto per Archiepiscopum Cantuar. Sacramento Dom. Regis Corporali, de concedendo, & servando cum sacra confirmatione, Leges & consuetudines ab antiquis, justis, & Deo devotis Regibus Angliæ, Progenitoribus, Plebi Regni Angliæ concessas, & præsertim leges & consuetudines, & libertates a gloriosissimo & sanctissimo Rege Edwardo, Clero Populoque Regni prædicti concessas, & servando Deo & Ecclesiæ Sanctæ Domini, Cleroque & Populo pacem, & concordiam integre in Deo juxta vires suas, & de faciendo fieri in omnibus judiciis suis, æquam & rectam Justitiam & discretionem in misericordia, & veritate; & etiam de tenendo & custodiendo justas Leges & Consuetudines Ecclesiæ, & de faciendo per ipsum Dom. Regem, eas esse protegendas, & ad honorem Dei corroborandas, quas vulgus juste & rationabiliter elegerit juxta vires ejusdem Dom. Regis.*

This is an additional Clause.

This is *verbatim* the Latin for the preceding French, except in the additional Clause, and the Conclusion which makes the just Laws and Customs both to relate to those of the Church, and

and thoſe that the Vulgar ſhall have juſtly and reaſonably choſen.

The like we find, (q) 1 *H.* 4. and in the *Pontificale* of the Archbiſhops and Biſhops; and it is added, after the King hath, as before expreſſed, anſwered to the Propoſals, *Pronunciatis omnibus, confirmat Rex ſe omnia ſervaturum, Sacramento ſuper Altari præſtito coram cunctis*; *i.e.* that the King by his Oath, taken upon the Altar before all preſent, to obſerve theſe, confirms them.

(q) *Rot. Parl.* 1 *H.*4. *num* 16, & 17. King *Henry* the Fourth's Oath.

The Solemnities and Ceremonies uſed at the Coronation of King *Richard* the Second, may be peruſed at large in *Tho.* (r) *Walſingham*, and he ſaith, he ſwore before the Biſhops and Nobles there preſent, for they only could hear his Oath, that he would permit the Church to enjoy its Liberties, and would honour it and its Miniſters, that he would hold right Faith, and would forbid Rapines, and all Iniquities in all their Degrees. 2*ly*. That he would make to be kept, every where, the good Laws of the Land, and eſpecially, the Laws of St. *Edward* King and Confeſſor, who was buried in that Church, and would make all evil Laws to be abrogated. 3*ly*. That he would not be an accepter of Perſons, but would make right Judgment betwixt man and man, that eſpecially he (s) would obſerve Mercy, as the Clement and Merciful God might grant Mercy to him.

(r) *Hiſt. Ang. fol.* 194, 195. *Juravit coram Archiepiſcopo & Proceribus qui ibi aderant, quoniam ipſi ſolum ejus Juramentum audire potuerunt.*

(s) *Præcipue miſericordiam obſervaret, ſicut ſibi ſuam indulgeat miſericordiam clemens & miſericors Deus.*

Having thus given an account of theſe Coronation Oaths, I come to the Objections. *Firſt*, They (t) ſay, that the word *Vulgus* doth ſignifie the two Houſes, and the word *elegerit* is to be taken in the Future Tenſe; ſo that the King is obliged to conſent to ſuch Laws as the two Houſes, eſpecially the Commons do chuſe.

(t) *Prynne*'s Treachery and Diſloyalty. Anſwer to the Objections about the Words *Quas vulgus elegerit.*

It is a wonder to me, how men that pretended to any reading or learning in Antiquities, or in the Conſtitution of the Government, could defend their Cauſe with ſuch pitiful Reaſonings, eſpecially againſt King *Charles* the Firſt, who neither had taken ſuch an Oath, nor many of his Predeceſſors before him.

The Latin Tranſlation of two French words gave all the occaſion of diſpute; for that which is called *Communate*, is rendered *Plebs* and *Vulgus*, and *aura eſlu* is tranſlated *elegerit*; whereas, were it to have been underſtood in the Future Tenſe, it ſhould have been *eſlira*: and agreeable to that in all the Authentick Records of the Exchequer, the word *elegerit* is Engliſhed in the Preterperfect Tenſe. Thus much may ſuffice as to the word *elegerit*. Dr. *Brady*'s *Gloſſary* will ſatisfie the Curious about the import of the word it ſelf.

Concerning the word *Vulgus*, one ſolid (u) Author ſaith, That we may be confident, that neither the Biſhops, Privy Council, Parliament, or any other whoſoever they were, that framed or penned this Oath, ever intended in this word the Commons in Parliament, much leſs the Lords: they would never ſo much diſparage the Members of Parliament, as to diſgrace

(u) Freeholders Grand Inqueſt, *p.*46. What meant by *Vulgus*, according to the Opinion of ſome.

grace them with a Title both baſe and falſe. It had been enough, if not too much, to have called them *Populus*, the People; but *Vulgus*, the Vulgar, the rude multitude (which hath the Epithete of *ignobile vulgus*) is a word as diſhonourable to the Compoſers of the Oath to give, or for the King to uſe, as for the Members of the Parliament to receive; therefore he judgeth, that by *Vulgus* muſt be meant the Common People, not the Lords and Commons.

But then, ſaith the ſame Author, the doubt will be, what the Common People, or *Vulgus*, out of Parliament have to do to chuſe Laws. In anſwer to which, the preceding word is to be conſidered; *Conſuetudines quas Vulgus elegerit*, the Cuſtoms which the Common People have choſen. If we obſerve the nature of Cuſtom, it is the *Vulgus*, or Common People only who chuſe Cuſtoms. Common uſage, time out of mind, creates a Cuſtom; and the commoner the uſage is, the ſtronger and the better is the Cuſtom. No where can ſo common an uſage be found, as among the Vulgar, who are ſtill the far greateſt part of every multitude. If a Cuſtom be common through the whole Kingdom with us, it is all one with the Common Law of *England*, which is often called Common Cuſtom; ſo that to protect the Cuſtoms which the Vulgar chuſe, is to ſwear to protect the Common Laws of *England*.

Cuſtoms choſen by the Vulgar, or Common People.

(w) *Gloſſary*, p. 36.

Agreeable to this, is what the learned Dr. *Brady* (w) notes, That upon the whole, it ſignifies no more than that the Community had choſen, that is owned, ſubmitted to, and deſired ſtill to uſe their Old Cuſtoms, which by uſe, time out of mind, they had enjoyed for the better management of Affairs, and Conveniency betwixt Man and Man, all the Nation over, or in any particular County, Hundred, Town, City or Burrough, ſuch long practices being the foundation of all Cuſtoms: but theſe are to be juſt, which intrench not upon the Government or Laws, and by permiſſion and ſufferance only become Laws.

(x) *Id.* p. 35.

What meant by the Community.

But the ſame (x) Author judiciouſly affirms, That the Community here intended was the Community of the Biſhops, Abbats, Priors, Earls, Barons, Great Men, and the whole body of the Tenents *in Capite*, expreſſed by thoſe words, in the former Queſtions, Clergy and People; for by them theſe demands were made, and no doubt they would firſt ask for themſelves, for the Vulgar or Rabble could not come near to make their Demands at ſuch a Solemnity as this was, ſo (y) great and ſplendid; there being at it, *Charles* and *Lewis*, Earls of *Clermont*, two of the King of *France*'s Brothers, the D. of *Brabant*, the Earl of *Fens*, and the other great Men, both of *France* and *England*, with the Counteſs of *Artois*.

(y) *Walſingham*, *fol.* 95. *num.* 20.

Whoever deſires further ſatisfaction, may conſult the ſame learned (z) Author, who makes it clear, That the word *Plebs*, *Vulgus* & *Populus* in the Writers of that Age was uſed for the Laity in way of contradiſtinction from the Clergy.

(z) *Gloſſary*, p. 24.

I

I ſhall at preſent leave this, and note, that for any thing appears to the contrary, the ſame Interrogations, Oath, *&c.* preſented to *Edward* the Second and Third, (without the additions of King *Richard's*) continued without any alteration to *Henry* the Eighth's (*a*) time, and in that we find the King promiſeth he ſhall keep and maintain the Liberties of the Holy Church of old time granted by their Righteous Kings of *England*; and that he ſhall keep all the Lands, Honours, and Dignities righteous and free of the Church of *England*, in all manner Holy, without any manner of miniſhments; and the rights of the Crown hurt, decay, or loſs, to his Power ſhall call again into the ancient eſtate; and that he ſhall keep the Peace of Holy Church, and of the Clergy, and of the People with good accord; and that he ſhall do in his Judgment, Equity and right Juſtice, with Diſcretion and Mercy; and that he ſhall grant to hold the Laws and Cuſtoms of the Realm, and to his Power keep them, and affirm them, which the People and Flock have choſen; and the evil Laws and Cuſtoms wholly to put out, and ſtedfaſt and ſtable Peace to the People of this Realm keep, and cauſe to be kept to his Power. In this Oath King *Henry* the Eighth interlined, for the right explication of it, inſtead of *People and Flock*, theſe Words, *which the Nobles and People have choſen with my Conſent.*

(*a*) Book of Oaths, *fol.* 1. The Oath of King *Henry* the Eighth. I find in the Heralds Office the words thus: *Do ye grant the rightful Laws and Cuſtoms to be holden, and permit ye, after your Strength and Power, ſuch Laws as to the Honour of God ſhall be choſen to the People, by you to be ſtrengthned and defended?* Vid in Coll. Arm. p. 60.

The Oath of King *Edward* the Sixth, ſo far as relates to my purpoſe was this, Do you grant to make no new Laws, but ſuch as ſhall be to the honour and glory of God, and to the good of the Commonwealth, and that the ſame ſhall be made by the conſent of the People as hath been accuſtomed?

Oath of *Edward* the Sixth.

I have not ſeen any Tranſcripts of the Oaths of Queen *Mary* or Queen *Elizabeth*, thoſe which King *James* and King *Charles* the Firſt took, run thus; Will you grant to hold and keep the Laws and Rightful Cuſtoms which the *Commonalty* of this Kingdom *have*; and will you defend and uphold them to the Honour of God, ſo much as in you lyeth?

Oaths of Queen *Mary* and Queen *Elizabeth* not ſeen by the Author. The Oaths of King *James* the Firſt, and King *Charles* the Firſt.

That Branch of the Oath which relates to my purpoſe, taken by King *Charles* the Second, runs thus: *Sir, Will you grant to keep the rightful Cuſtoms which the Commonalty of your Kingdom have, &c.*

The Oath of King *Charles* the Second. *Hiſt. Coronationis Caroli 2. in Colleg. Arm.*

The Oath that our preſent King *James* the Second took at his Coronation, was in the ſame Words as that of his Royal Brother; wherein the Word *Cuſtoms* is to be taken in the largeſt extent, to include *Laws* alſo.

The Oath of King *James* the Second.

Now upon the whole we muſt conſider Firſt, That in the Eye of the Law the King never dyes, ſo that he is King before any Solemnity of Coronation. Secondly, The variety of Forms and Precedents, ſeem to prove that one preciſe form is not ſimply neceſſary; ſo the interlining of *Henry* the Eighth upon Record alſo ſhews. And if it had been of conſequence to have retained the old form, we ſhould have heard of it either then or in ſome ſucceeding Parliaments. Laſtly, it cannot be denied,

Conſiderations upon this Diſcourſe of the Coronation Oaths.

denied, that if the King be bound by a lawful Oath to paſs all Bills, it is not the form of denying it, but the not doing of it which makes the Perjury. And ſo when the King is tender of a flat denial, and attributing ſo much to the judgment of his great Council, that he only uſeth the words *aviſera*; it would be a ſtrange Doctrine, that all the Kings of *England* who have given this Anſwer, have been forſworn, and neither Parliament nor Convocation taken notice of it in ſo many Ages.

But when by dint of Argument the Parliament Champions were driven from theſe Holds, they fled to their laſt Burrow. So one of them confeſſes, that in Acts of Grace the King is not bound to aſſent, nor in Acts wherein he is to depart from the particular right and intereſt of his Crown; and laſtly that if he do not conſent (however bound by Oath) yet they are not binding Laws to the Subject. But then comes the handful of Gourds which ſpoils the Pottage: Except in caſes of neceſſity; If the ſafety of the People be concerned; If it may prove dangerous or inconvenient to them, then an extraordinary courſe may be taken.

How the Long Parliament Writers would have the King part with his Prerogative in Caſes of neceſſity only.

This was the plauſible Plea of 1641. to get the Militia into their hands: for they urged that in caſe of apparent and imminent danger, the Peoples ſafety was not to be neglected; They might not be expoſed as a prey to their Enemies, therefore muſt be put into a poſture of defence. This was grateful to the People, out of that real love they bare to themſelves, they muſt favour that ſide which pretends to take care of their ſafety. Give to any Perſon or Society a Legiſlative Power without the King in caſe of neceſſity, (*b*) permit them withal to be ſole Judges of neceſſity, when it is, and how long it laſts: and then it is more than probable, the neceſſity will not determine, till they have their utmoſt deſires, which is the ſame in effect as if they had the Legiſlative Power.

(*b*) Anſwer to Obſerv. *p.* 76.

Further it muſt be conſidered that neceſſity upon that ſuppoſition muſt be very evident, there needs no ſuch great ſtir who ſhall be Judge of it; when it comes indeed, it will ſhew it ſelf; when extream neceſſity is diſputable, it is a ſign it is not real. Secondly, The Agent muſt be proper, otherwiſe it cuts in ſunder the very Sinews of Government, to make two ſupremes in a Society, and to ſubject the People to contrary commands.

That the Houſes ſhould be Judges of this Neceſſity.

But to claim ſuch a Power over the King in extraordinary caſes alone, doth not much vary the caſe: for at the ſame time they voted themſelves the proper Judges of ſuch neceſſities, and the erecting of any ſuperintending Power in the circumſtances of thoſe times, and in all parallel caſes, would not only unſoveraign the King (by making this Power the Soveraign) but the exerciſe of it would be ſubject to more dangerous extravagances than Regal Power is, and yet leſs capable of Regulation than it. For the Law knowing there is none but God, *qui cuſtodiat ipſos cuſtodes*, concludes from the weakneſs and imperfection

imperfection of every other form of Government, that the Soveraignty of Law-making was better placed in the hands of a ſole Prince, than in a Popular or Ariſtocratical hand; and that a pōſitive known Law without any coercive Superintendent was a ſufficient, and the beſt boundary of Regal Power: For the Law and the Tranſgreſſion of it, being both at once made manifeſt and notorious, it will be ſo ſufficient (*c*) ſecurity of the future obſervance of the Law, that Princes will not offer to vīolate it. Now if ſuch a Supreme Power, as theſe would have in the two Houſes, in what caſe ſoever, be once enacted, that muſt either be boundleſs or circumſcribed by a Law; and if that be circumſcribed with a Law, then muſt that Law alſo have a Superiour Power to enforce it: and ſo there muſt be a Superiour Power, over Superiour Power *in infinitum*, and yet at laſt leave the moſt Superiour Power in that liberty which the Obſerver calleth boundleſs, Arbitrary and Tyrannical.

(*c*) Review of Obſervations.

If this Principle were true, all is but miſleading formality of Law, the Soveraignty is not in the King but in the People; the King is the only Subject and but a common Voucher, whoſe concurrence is unavoidably implied; his Will, his Underſtanding and his Power are all ſubject to the Body of the very Subject that in Parliament doth ſwear ſubjection to him: and theſe pretended Rights being hid ever ſince the beginning of the Kingdom, the whole generation of the Subject ever ſince, hath by the injury of our Laws been moſt impiouſly mis-ſworn in their Allegiance. And whereas the truſt is irrevocably committed to the King and his Heirs for ever, how can it be conceived it ſhould ſleep during the ſitting of a Parliament, unleſs that jocular ſaying of King *James* were to be underſtood really, That during the Seſſions of a Houſe of Commons there were five hundred Kings? And if any ſuch Power were in the Houſes, it was a ſtrange overſight to leave it to the Kings diſpoſal, when to call the Body together, and when to diſſolve it (as before I have touched) whereby the King might ſolely determin where, and how long he would be over-ruled, and when King again: whereas by the falſe ſuggeſtion of the Obſerver (that it was fit the Houſes ſhould have a Superintendent Power, in caſe of extraordinary danger, and they only to be Judges of that danger) he cunningly turns the Tables, and makes the Houſes to be Soveraigns as long as they pleaſed; and when they were weary of reigning, the Kingdom ſhould be out of danger, and then it ſhould be the Kings turn to command again.

By the Arguments of the Parliamentary Writers, the Soveraignty is not in the King, but in the People.

But to draw to a concluſion on this ſubject, which coſt ſo much Blood and Treaſure: There (*d*) neither is nor can be the ſame neceſſity of obſerving an old Law, to which a King is obliged by his Charter and his Oath, and of a new Law to which he hath not given his Royal Aſſent. If *Magna Charta* extended to this, it were *Charta Maxima*, the greateſt Charter that ever was granted. To be be denied nothing, is a

(*d*) Anſw. to Obſerv. p. 72, 73.

Priviledge indeed as good as *Fortunatus* his Purſe; or as that old Lawwhich one found out for the Kings of *Perſia*, That he might do what he would. The taking away the Kings Negative Voice, may indeed ſecure us againſt Tyranny, which never can come in upon us, as long as the two Houſes (*e*) Negatives ballance it; but it leaves us open and ſtark naked to all thoſe Popular evils and Epidemical diſeaſes, which flow from Popular Government, as Tumults, Seditions, Civil Wars, and the *Ilias* of Evils which attends them; the Negative Voice being the Soveraigneſt remedy againſt ſuch great Miſchiefs.

The King's Negative Voice neceſſary.

(*e*) *Idem*, *p.* 136.

One Wheedle I find more they uſed, ſince the King was ſo tender of violating his Coronation Oath, in giving Aſſent to their new Bills, which were diametrically oppoſite to the old fundamental Laws, made in defence of Epiſcopacy, and the Kings Prerogative in the Militia, *&c.* they quit their Title of Parliament men, and would be Caſuiſts to reſolve his Conſcience, telling him that where the People by Publick Authority, will ſeek inconvenience to themſelves, and the King is not ſo much intereſted as themſelves, it was more inconvenience and injuſtice in the King to deny than to grant it.

That the King is not bound to conſent, where what is deſired is more inconvenient to the People than himſelf.

Thus the Houſes would have granted the King a Diſpenſation to have acted againſt the dictates of his Reaſon, Conſcience, and the fundamental Laws. And becauſe he would not own their Commiſſion for it, they perſecuted him to the Scaffold. This was an unheard of Villany to be offered to ſo Pious and Religious a Prince, that as Father of his People, would not give them a Stone inſtead of Bread, or a Scorpion inſtead of a Fiſh. The Heathen was much honeſter, who prayed *Jupiter* to give him good things, though he never opened his Mouth for them; and to withhold bad and prejudicial things, though he petitioned never ſo earneſtly for them. This was a ſtrange Principle, that the King ſhould be bound by Law to deſtroy his People, or not preſerve their Right, unleſs he not only violate his own Conſcience, but their very Liberties. Can a man imagine thoſe People, of whom *Juvenal* ſpeaks,

——evertere domos totas optantibus ipſis
Dii faciles——

if they had underſtood their own Prayers, would have accuſed the Gods for denying them.

As they thus ſought to huſh the Kings Conſcience, ſo they endeavoured to find a quaint *ſalvo* for their own more brawny ones: For when it was urged, that to deny the Kings Negative Voice, was to diſſolve the excellent conſtitution of Parliaments, and was directly againſt the ſettlement of it upon the true baſis of the Ballance, and the mutual ſtipulation of the King and his People, as they loved to phraſe it they anſwer by their Prolocutor, that thoſe who contract to their own ruin, or eſteem ſuch Contracts before their own preſervation, are felonious

felonious to themſelves, and rebellious to Nature. Inferring from thence, That if the legal Conſtitution of Government, be not agreeable to the Liberties the Houſe conceives needful for them, they are obliged to contend to alter them: which is no more nor leſs, than if a Criminal being condemned to be hanged, ſhould be guilty of another Felony and Treaſon againſt Nature to yield to the Sentence, but that he ought in his own defence to kill as many as he could, that he might thereby ſave his life by eſcape.

The Writers for the Parliament affirm, That where the Houſes think the Conſtitution of the Government is not agreeable to the Liberty of the People, they may alter it.

Thus I hope I have made apparent the falſhood of the Poſitions ranged in defence of that diſmal Parliament, who made uſe of them as Platforms upon which to plant the Artillery of their Acts and Ordinances. For under the pretext of their obligation to preſerve the Kingdom, they voted to put it in a poſture of defence; and they voted from the King his Navies, Officers, Privy Counſellors, and Revenues, pretending the Navies were ſtill reſerved for the King, in better hands than he would put them, and for the other they would furniſh him with better principled Miniſters. Whereas by the ſame Precedent, the Subjects were bound to give up their Eſtates to their ordering, as often as they pretended they could diſpoſe of them more wiſely. For they might alledge, the State (which they reputed themſelves) had an intereſt paramount in them in caſe of publick extremity: ſo that as they pretended the Head without the Body was the State before, ſo now it was fit the Body ſhould be without the Head; whereas the Law hath provided againſt either exorbitances: and if there was neceſſity we muſt fall into one, we ought in reaſon to chuſe the former, becauſe being better acquainted with that, we could better digeſt it; and it would be leſs burthenſom to our Eſtates to ſatisfie one than five hundred, nay ten thouſand, as it appeared when the greedy Commonwealths men with their Committees, Armies, *&c.* was that flat Vermine in the Bowels, which (how true ſoever it is of the *lumbricus latus*) was certainly true of this Monſter, That it was every where Head and Mouth.

How the Long Parliament voted all the Power into their own Hands.

It is to be well weighed, that as Parliaments are in the higheſt degree beneficial, when they keep within the bounds of duty and ſobriety; ſo when they will have their Ordinances to have the force of Laws, and not govern themſelves by known Laws, they are the cauſe of many Diſtempers in a Kingdom, and the Subjects condition is moſt unhappy in the Multitude of Phyſicians: for extraordinary Remedies, ſuch as they always pretend to uſe, are, ſaith Sir *Henry Wotton*, like hot Waters which may help at a pang, but being too often uſed ſpoil the Stomach.

When Parliaments beneficial, when not.

A Compleat Parliament is that (f) Panchreſton or Soveraign Salve for all Sores; but ſome would make the name of Parliament a *Meduſa*'s Head to transform reaſonable men into Stones, and ſubordinate Monarchy to the two Houſes, who

(f) Anſwer to Obſerv. *p.* 150.

muſt be denied nothing; but with their good will would claim for them a paramount intereſt with the Soveraign, whom they would advance only to the height and mighty Dignity of a Doge of *Venice*, or a *Roman* Conſul, whileſt they muſt be the Tribunes of the People their Superviſors. So that we cannot be content to gather the bleſſed fruits right conſtituted Parliaments would afford us, but we muſt rend away the top Branch, yea ſtub up the Tree that we may ſcramble for the Fruit.

(g) 10 *Annal.*

Tacitus (g) gives a Caution how a Prince may ſupport his Authority, that he do not *vim Principatus reſolvere, cuncta ad Senatum revocando.* It is fit a Prince ſhould have the Glory of performing thoſe things himſelf which are his Prerogatives, and not to refer ſuch things to Conventions of Parliament, which properly belong not to their Cognizance. Since therefore by the condeſcenſions of our Wiſe and Gracious Princes, there are ſeveral things in *England*, the King cannot by Law do alone, it is a moſt requiſite Wiſdom in Princes, that as they obſerve the Laws in ſecuring the Peoples Liberties and Privileges; ſo by no Arbitrary Aſſumption of eitheir or both Houſes, to let their Prerogatives be invaded: for thoſe are now no more than are rationally and politically neceſſary for orderly and eſtabliſhed Government.

Kings not to grant away their Prerogatives at the Importunity of Parliaments.

The Encroachments of the never to be forgotten long Parliament, (ſeveral of which I have in this and the foregoing Chapter hinted) may be ſufficient documents to Princes, not to yield ſuch a body too much Power: for if the ballance once decline, a little weight will ſink it.

Therefore though Princes are not to enlarge their Prerogatives, *nova ſiti ad alia aliaque properare*; yet they ought to preſerve thoſe that remain. For any Raveling once yielded, will make the Royal Cittadel defenceleſs. *Teſtudo ubi collecta eſt in ſuum tegmen, tuta eſt ad omnes ictus; ubi exerit partes aliquas, quodcunque nudavit, obnoxium & infirmum eſt:* The *Tortoiſe* as long as it keeps within its ſhell and coverture is ſafe; but if it unbare any part, it is obnoxious to danger.

Above all things a Prince ſhould he careful never to part with the Prerogative of Summoning and Diſſolving Parliaments. For we cannot forget that the Houſes of 1641. not content with a Bill for Triennial Parliaments, got an Act for perpetuating themſelves; and that would not ſatisfie, but they prepared a Bill for the certainty of future Parliaments, whether the King had occaſion for them or not: ſo that if the King omitted the ſending out of Writs and Summons, the Chancellor might, and for failure the Sheriff, and I know not what inferiour Officers; of which the Bleſſed King complains.

The fundamental Cauſe of Factious Members in Parliament.

I cannot diſmiſs this Subject without taking notice of the Fundamental cauſe of Factious Members of Parliament. In *England* there is no ſuch powerful Engine to make Faction and Sedition

Sedition formidable and dangerous to Government, as when the Majority of the Freeholders are wrought upon (by the Arts I have in ſome meaſure hinted before, and ſhall more largely in the Chapter of Faction) to chuſe Members of the Houſe of Commons of their own Temper: for ſuch a Number being imbodied in that Houſe, give and receive mutual ſtrength from one another. For when ſuch are met, they do not take care to unite the minds of the Subjects to their Prince, or one to another, or imploy their time upon the great concerns of the Nation; but are drawn to promote private Animoſities under (*h*) pretence of the Publick; and are ſo far from proceeding calmly and peaceably to curb the motions of unruly Spirits that endeavour to diſturb them, that they expoſe the King to the Calumny and danger of thoſe worſt of men, who endeavour to render him and his Government odious to the People. I ſhall now touch upon ſome of the Artifices uſed to bring in ſuch Members in the Parliament of 1678. and ſome ſucceeding ones whereby their Conventions were rendred uſeleſs for the King and People, and inglorious to themſelves, though they pretended to as much Loyalty and Publick good as thoſe in 1641. did at their firſt ſitting.

(*h*) King's Speech, 6 *March*, 1678.

The Artifices uſed by deſigning People, to get ſuch as they deſired, to be elected.

The King having diſſolved the long Parliament and ſummoned this to ſit the 6*th* of *March*, 1678. the induſtry of the Diſſenters, Male-contents, and we may ſuppoſe Commonwealths men, was extraordinary great, as now hoping they ſhould be able to chuſe ſuch Members as would be more favourable to them.

The Characters they gave Men of the Court-party.

They had been long inſtilling into the Peoples Heads, that in the former Houſe there had been a Court and Country Party, the former were for Arbitrary Government, fleecing the People, Perſecution, and ſuch as gave no great credit to the Tragical repreſentation of the Popiſh Plot: The latter were moderate men, and not ſo much for Ceremonies as the purity of Religion, would ſtand for the Peoples Liberties and Properties, by riding night and day about the Villages, and trudging about Corporations, and the weekly Conventicles, they ſpread this Character abroad, and with all the Arts imaginable, endeavoured to proſelyte (*i*) all that were not ſharp-ſighted enough to pierce into their deſigns. If any ſeemed not to believe thoſe Characters, or declared himſelf for the Government, Civil or Eccleſiaſtical, eſtabliſhed by Law, and neither for Popery or Arbitrary Government, nor yet for a Commonwealth or Diſſenters, they run them down with noiſe, traduced them behind their backs as Papiſts in Maſquerade and men of Arbitrary Principles. And if any were ſo bold as to ſcruple the coherence of the Narratives of the Popiſh Plot, he was vilified as a Defamer of the Kings Evidence, a ſtifler of the Plot; and from hence they concluded to inſinuate into the Populace, that thoſe Loyal Gentlemen who had been Members of the late long Parliament, had joyned with the

(*i*) Addreſs, *part* 2. *p.* 2, 3.

Papiſts in Maſquerade.

the Court to hinder the Diſcovery of the Plot; and if any gainſaid them, they uſed ſuch queſtions, What, Are you for Popery? Will you give your Voice for a Papiſt? Are you willing to have your Throat cut? Are you for Arbitrary Government? By which means they won over too many to joyn with them, to exclude many Loyal and Orthodox Gentlemen from being choſen Members of Parliament.

Excluding Loyal and Orthodox Gentlemen.

Their deſign was advantaged becauſe ſome were their friends of old, others had come the half way over to gain the reputation of moderate men, others had been diſguſted by the Government. The Conventicle Teachers rallied up their Flocks, and they all joyned to ſlander the Clergy as if they had a kindneſs for Popery in their hearts, though they durſt not diſcover it for the preſent: And generally blaſted all the Loyal Gentry as Popiſhly affected, the Court-Party Penſioners, *&c.* So that if any one bore any Publick Office Military or Civil, he was *eo nomine* to be rejected. The Perſons they recommended to the People to be choſen, were firſt all thoſe Gentlemen, who called themſelves the Country (*k*) Party, who had appeared moſt zealous againſt his preſent Majeſty, the Queen Dowager, and Miniſters of State. To theſe they added as many as they could of the reliques of the old Rebellion, or their Children, and made up the number out of the moderate and diſcontented Gentlemen, Burgeſſes and Tradeſmen. It was ſufficient recommendation if the Government had diſplaced any, for theſe were looked upon as not to be corrupted or bought off: and here and there they took in an honeſt Gentleman, in hopes to win him to their ſide by this kindneſs.

(*k*) *Idem, p.* 5.

After the diſſolution of this Parliament, when his late Majeſty iſſued out his Writs for another to convene, 17 *Oct.* 1679. they added to their former Arts the loud clamours againſt *French* Penſioners, Popery, Arbitrarineſs, and all thoſe who voted againſt the Bill of Excluſion, as Popiſhly affected, or downright Papiſts; traducing his Majeſty, the Court, the Miniſters of State, and almoſt all the Loyal Gentry and Clergy for endeavouring to have thoſe men choſen. The ſecond advantage they made was the pretended diſcovery of (*l*) Sir *Stephen Fox* of the Penſioners of the late long Parliament: which diſcovery being haſtily made, and no Record of it being entred, they took the confidence to add to it whomſoever they pleaſed to have ſo thought; They made the People believe they knew who would be Penſioners likewiſe, and led the diffidence to that height, as to exclude as far as they could poſſibly, not only all the Courtiers and other Perſons who had any places of profit and advantage under his Majeſty, but their Relations too, and wanted not much that they had excluded all thoſe who bore any Honorary Imployment. So that nothing recommended a man ſo effectually for a Parliament man, as that he had not been thought fit

French Penſioners.

(*l*) Addreſs, *part* 3. *p.* 5.

Penſioners to the King.

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to be truſted in the leaſt by his then Majeſty, or their Neighbour Gentry, theſe they cried up as true Friends to the Proteſtant Religion, and the Country; and he was an hard-hearted Man in their Dialect, who called the Sincerity of their Loyal Intentions in queſtion: However by their Actings, many of them have been diſcovered to be but cold Friends to the Government.

But Intending to diſcourſe more fully of the ſeveral Arts us'd by deſigning Men in the Chapter of Factions, I ſhall at preſent quit this Subject, and only deſire Kings to conſider, that they can condeſcend no lower to gratifie Importunities of Parliament or People, in yielding up any of their Privileges.

The Philoſopher of old hath noted, how Kingly Authority was leſſened among the *Grecians*, which was no ways profitable to them. He ſpeaking of Kings in the Heroick times, (*m*) That then they had the Goverment and Adminiſtration of Matters in the Cities, and the adjoyning Territories within their Dominions, and what extended without the Limits of the Empire (*viz.* to preſerve and protect their Subjects againſt their Enemies, make War and Peace, *&c.*) But after, partly by the ſpontaneous Conceſſions of the Princes, and partly by the Encroachment of the People, they came to be leſſened in Power, and in ſome Cities had only the Power of Sacrificing left, in others the Command of their Armies. This, as well as other Reaſons, muſt needs demonſtrate, That if ever any two Houſes of Parliament ſhould by Arts of Inſinuation (as that of 1641. did, That unleſs the King would grant they might not be diſſolved without their Conſents, they could not have time to ſettle his Throne, and redreſs Grievances) or by denying neceſſary Supplies, force a King to grant them a Power of prolonging their own Sitting, or meeting at ſtated times without his Writ, or yielding to their Bills implicitly, (as the Black Parliament of 41. endeavoured) and then to have the Power of nominating the Great Miniſters of State, and the Officers of the Militia, an end would be ſoon put to Monarchy.

(*m*) Ὕστερον δὲ, τὰ μὲν αὐτῶν παλαιόντων τῶν βασιλέων, τὰ δὲ τῶν ὄχλων παραιρεμένων, ἐν μὲν ταῖς ἄλλαις πόλεσι θυσίαι καταλειφθῆναι τοῖς βασιλεῦσι μόνον---ἐν τοῖς ὑστερεοῖς τῶν πολεμιχῶν τὴν ἡγεμονίαν μόνον ἔχον. *Polit. l.* 3. *c.* 14.

Kings never to yield what the Long Parliament were ſo earneſt for.

Therefore every one that loves their Country, the continuance of that moſt excellent Frame of Government, for the Subjects ſecurity, as no other Country enjoys; thoſe who would avoid the ſad Ravages of Civil War, who would make their Prince Glorious, their Country Renowned, themſelves and their Poſterities Happy: let them be careful to elect Loyal and Judicious Members, neither tainted with Faction, Ambition, or Self-ends; and if any ſuch be elected, let the Wiſe and Loyal, when they meet in that Great Aſſembly, watch over the Deſigns of ſuch ill Members, diſcover their Intriegues, be careful not to be circumvented by their Artifices, ſtick cloſe to the Fundamentals of Government; and then all things will be proſperous, and they will have the honour of being ſtiled True Patriots of their Country.

The Care to be had in Elections.

Sir (*n*) *Edward Coke* hath noted, That Parliaments ſucceed not well

(*n*) 4. *Inſtit. p.* 35.

Several Cases where Parliaments succeed not well, when the King is displeased with the Two Houses.

well in five Cases. First, when the King hath been in displeasure with his Lords or Commons; therefore it was one of the Petitions of the Commons to *Edw.* 3. That he would require the Archbishop, and all other of the Clergy, to pray for his Estate, for the Peace and good Government of the Land, and for the continuance of the King's Good-will towards the Commons; to which the(*o*)King replied, The same prayeth the King. The like Petition he saith, many times the Lords have made, and further adds, That the King in all his weighty affairs, had used the advice of his Lords and Commons, always provided, that both Lords and Commons keep within the Circle of the Law, and Custom of Parliament.

(*o*) *Rot. Parl.* 25 *E.* 3. *num.* 15. 43 *E.* 3. *num.* 1. 50 *E.* 3. *num.* 2.

When Variance among the Lords.

The second is when any of the great Lords are at variance among themselves, as he instanceth in the third (*p*) of *H.* 6. in the Controversy betwixt *John* Earl Marshal, and *Richard* Earl of *Warwick*, and 4 *H.* 6. betwixt the Duke of *Glouceſter*, and Bishop of *Wincheſter*, whereby little was done in any Parliamentary Court, and that little of no moment.

(*p*) *Rot. Parl.* 3 *H.*6. *num.* 18.

When no good Correspondence betwixt the Lords and Commons.

The third, when there is no good Correspondence betwixt the Lords and Commons; which happens, when some People out of design to render the meeting of the two Houses ineffectual, do project some matters, whereby the Houses may clash about Privileges, as was lately in *Shirley*'s Case, about the Mony-Bill from the House of Lords, and many other Particulars might be instanced in; therefore Sir *Edward Coke* saith, That when it was demanded by the Lords and Commons, what might be a principal Motive for them to have good success in Parliaments, it was answered, They should be insuperable, if inseparable, *Cum radix & vertex Imperii in Obedientium consensu rata sunt.* The very root and top of Government consists in the consent of the Obedient, and the Subjects Happiness is in that Harmony, when it is betwixt the two Houses, and among themselves: but much more happy, when it is likewise betwixt the Sovereign, and the two Houses. It is that which compleats their own, and the Peoples Felicity. But when the two Houses, or one of them, are for wresting the Sovereigns Prerogative from him, as in Forty one, then it is the most fatal and ill-boding sign of any other.

Sitis insuperabiles, si fueritis inseparabiles.

When Disagreement in the House of Commons.

The fourth is, when there wants Unity in the House of Commons, as we had not long since Experience, when within those Walls (from whence wholesome Counsels are expected, and all things tending to the preservation of the King's Peace, Crown, and Dignity;) such Heats were amongst the Members, that if one Sword, that was half drawn, had been wholly unsheathed, it was thought a very bloody Battel had been fought.

When no Preparation for the Parliament.

The last he makes, is when there is no preparation for the Parliament before it begin; for which purpose the Summons of Parliament is forty Days or more before the Sitting, to the end that Preparations might be had for the considering the arduous and urgent affairs of the Realm. And Sir *Edward* saith it was

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an ancient cuſtom in Parliament, in the beginning thereof, to appoint a ſelect Committee to conſider of the Bills in the two preceding laſt Parliaments that paſſed both Houſes, or either of them, and ſuch as had been preferred, read, or committed, and to take out of them ſuch as were moſt profitable for the Commonwealth.

When Redreſs of Grievances are preferred to the Supply of the King.

To theſe may be added a moſt material one, that makes unfortunate Congreſſes of Parliaments, *viz.* When the Members come up, with ſtrong Reſolutions to provide Remedies for ſome Grievances, either real or ſurmiſed, and at the ſame time the Sovereign is in great Straights, for ſupplies for the ſafety, repute, or neceſſary occaſions of the Government; for then (as in moſt of the Parliaments of King *Charles* the Firſt) the Houſes are for redreſs of Grievances, before ſupply, how preſſing and urgent ſoever, and do not credit the King that he will give them time to redreſs them, after he is ſupplied; and they from deſign, rather than this diffidence, will not ſuffer ſupply and grievances to go *pari paſſu*, Hand in Hand, as we may remember in thoſe Parliaments, wherein the popular Men made ſuch Harangues, that they would know whether they were Freemen, or Slaves, or had any thing to give before they entred upon the giving part: The like we ſaw in King *Charles* the Second's Reign, in ſome of his laſt Parliaments, whereby all their Conſultations were abortive; and both the Kings had no other Expedient but Prorogation, or Diſſolution; and diſuſe of Parliaments for ſome Years followed.

The happy Harmony in the laſt Seſſion of Parliament, *June* 1685.

How much happier have we been in the laſt Seſſion of the Parliament, under our moſt Wiſe, Magnanimous and Gracious King, wherein no ſtrife or contention was, but who ſhould be forwardeſt to ſupply the neceſſities of the Crown, to ſhew all Loyal Dutifulneſs to their Sovereign, whereby a moſt dangerous Rebellion in both Kingdoms was the eaſilier cruſhed; and which endears them to the King, that there can be no danger, but whatever good and wholſome Laws they ſhall propoſe for the general good of the Kingdom, will find a chearful allowance by him.

How happy had our Forefathers been if King *Charles* the Firſt had met with ſuch conſiderate Parliaments, who by a ſeaſonable ſupply and compliance, might have had (without that vaſt effuſion of Blood and Treaſure) all their Grievances redreſſed, and the flouriſhing State of the Kingdom preſerved, and the Memories of a great many Noblemen and Gentlemen had been tranſmitted without ſtain to their remote Nephews.

Some not willing to hear of the Miſcarriages of Parliaments, think this Diſcourſe needleſs.

But to draw towards a Concluſion of this Diſcourſe, Some that may not be willing to hear of the Miſcarriages of ſome Parliaments, wherein probably they were concerned, may ſay, what need is there now, to bring again upon the Stage the rigorous Proceedings of the two Houſes of Parliament, or more properly of the leading and deſigning Men in the Houſe of Commons, in the Years 1640, and 1680. ſince we are now happi-

ly paſt theſe Rocks, Quickſands, and treacherous Shores.

Becauſe we have a moſt wiſe King, and good Parliament.

All the World indeed muſt acknowledg we have a Royal, wiſe Pilot, who knows full well to ſteer the Soveraignty of the Commonweal. He hath weathered out high going Seas; ſo that neither their over-whelming liquid Mountains, nor the terrible Shot from the floating Caſtles have daunted him; magnanimity, unparallel'd Courage, and an Experience beyond moſt Crowned Heads, have raiſed him great Trophies of his Victorious toils: He is ſerved with ſage Councils, both private and National. So that all muſt confeſs we have leſs cauſe to fear any more dangers of Hurricanes and Shipwracks.

Yet we are not ſecure but that in after-Ages evil Members of Parliament may be.

But though we now enjoy *Halcyon* days, under a Sovereign, enriched with Royal abilities to the heighth of our Wiſhes; though he is bleſſed with a Parliament, as Loyal as can be deſired, betwixt whom there is no other Strife, but who ſhall out-paſs the other in mutual Obligations: Yet are we ſecure, that no ill Exhalations may be gathered in after-Ages?

Can we expect always temperate Weather, pleaſing Sunſhine, and fruitful Showres? No, in ſmall revolutions of Years we find Epidemical Diſeaſes return; exceſſes of Drought, Rains, or Froſts, are often marked in our Annals, even after promiſing Configurations of the Cœleſtial Bodies.

The Deſign of the Author in writing againſt the Exorbitances of ſome.

I write not an Almanack for a Year, or Pamphlet for a time, my Deſign is not *Infandum renovare Dolorem* out of any Pique; but as much as in me lies to ſhow from the by-paſt Irregularities, and Exorbitances of ſome Men, how Loyal, good, and Juſt Men may meaſure things by the Golden Standard of the Laws; how miſchievous Practices and Principles may be obviated; how every one may ſee what the upſhot of rebellious Principles will be; how to detect, and how to avoid the ſame kind of Rocks and Sands in after-Ages.

Some love not to hear of their Diſtempers.

I know ſome Perſons recovered from a valitudinary Condition, love not to hear of the Torments they have undergone, nor of the Extravagances of their delirous State: Yet this ſhould not hinder but the Healthful, and thoſe that would avoid the Calenture, ſhould patiently endure to hear a Deſcription of the Cauſes and Symptoms.

The Author's Apology for himſelf.

In this Diſcourſe I have only culled out ſuch Particulars, as I find Judicious Authors have inſiſted upon, againſt the unprecedented Proceedings of ſome late Houſes of Commons; which I think all Loyal Perſons diſapprove; and I believe a great many as well as my ſelf, have heard many of the then ſitting Members diſlike, when things were carried with an impetuous Torrent, that it was more dangerous to ſpeak againſt their Proceedings, or queſtion the unlimited Power aſſumed by that Houſe, than it was to ſpeak Seditious (I had almoſt ſaid Treaſonable) Words againſt the King.

Therefore I hope none of this preſent Honourable Houſe of Commons (who have ſo ſignalized their Loyalty in the laſt Seſſion) will take offence at what, from ſuch judicious Perſons as

I have met with, I have delivered the Sentiments of. My intention is no ways to leſſen the Rights, or neceſſary Privileges of that venerable Aſſembly; which never can be unbeneficial to the King, or People, but when Diſcontent, Faction, and Sedition hath too ſpreadingly infected the Electors.

The continuance of that worſt of Parliaments of 1641. in their diſloyal Practices ſo long, by the overgrowing of the Tares, which were only ſuffered to thrive, occaſioned ſo much corrupt ſeed to be ſown, as in twenty years there was no wholeſom grain left. We ſaw too late, how by ſome evil Seedſmen, a fertile, but dangerous Crop was ſhooting up apace. It is not a little Labour, nor ſmall diligence, will howe and weed out the Briars, Thiſtles, and deſtructive Shrubs, and poyſonous Weeds, that ſhoot their ſpreading Roots ſo far: But I hope the great Wiſdom of this Loyal Parliament, will find out ways and methods to prevent the danger of their thriving in a Soil, worthy of better Plants, than any will be ſet by Republican Hands.

What evil Principles taught during the Long Parliament.

CHAP. XXX.

Of the Kings moſt Honourable Privy-Council.

I Find by ſeveral Authors, that there are reckoned Four Councils of the King. *Firſt*, The *Magnum Concilium*, conſiſting of the Prelates and Nobles in Parliament; of which *Bracton*(*a*) may be conſulted, and what I have writ in the Chapter of Parliaments.

Four kinds of the King's Councils. The Firſt.

(*a*) *Lib.* 1. *c.* 2.

Secondly, A Convention of the Peers of the Realm, Lords of Parliament, yet not meeting as a Parliament, which appears manifeſtly in the Record, 25 *Aug.* 5 *H.* 7. upon an exchange made of ſome Lands betwixt the King and the Earl of *Northumberland*; the King promiſeth to deliver the Earl Lands to the value, *&c.* by (*b*) the Advice of the Eſtates of his Realm of his Parliament (if the Parliament be convened before the Feaſt of St. *Lucy*) or otherwiſe, by the Advice of his Great Council, and other Eſtates of his Realm, which the King ſhall Aſſemble before the ſaid Feaſt, in caſe the Parliament be not called: which well agreeth with the Act of Parliament, 37 *E.* 3. *c.* 18. where it is ſaid, before the Chancellor, Treaſurer, and Great Council.

The Second.

(*b*) *Per advice & aſſent du Eſtates de ſon Realm de ſon Parliament (parenſi que Parliament ſoit devant le Feaſt de St. Lucy) ou autrement, per advice de ſon Grand Council, & autres Eſtates de ſon Realm que le Roy ſerra aſſemblez, devant le dit Feaſt, in caſe que le Parliament ne ſoit.* Coke 1. Inſtit. lib. 2. c. 10. ſect. 164.

Thirdly, The Kings Privy Council, which appears to be different from the laſt Great Council, by many Records, and particularly, by that of (*c*) 16 *E.* 2. where it is ſaid, *Hen. de Bellomont* Baron of the Kings Great and Private Council was ſworn.

(*c*) *Rot. Clauſ.* 16 *E.* 2. *m.* 5. *dorſo.*

The Privy Council properly ſo called.

This Council is called *Concilium Privatum, ſecretum & continuum Regis*. The Firſt Member of this Council, is the Lord Preſident, who was anciently called *Principalis Conſiliarius*, and ſometimes *Capitalis Conſiliarius*.

Lord Preſident.

The firſt Lord Preſident Sir *Edward Coke* (*d*) mentions, was the Earl of *Lancaſter* 50 *E.* 3. 1 *R.* 2. then he reckons theſe in order, the Duke of *Bedford*, 1 *H.* 6. the Duke of *Glouceſter*, 10 *H.* 6. the Duke of *York* 11 and 22 *H.* 6. *John Ruſſel* Biſhop of *Rocheſter*, and after of *Lincoln* is called Preſident 13 *E.* 4. *John Fiſher* Biſhop of *Rocheſter* 12 *H.* 7. *Charles Brandon* Duke of *Suffolk* from the 25*th.* to the 37*th.* of *H.* 8. the Lord *Pawlet* 1 *E.* 6. the Duke of *Northumberland* 5 and 7 of *E.* 6. the Earl of *Arundel* 1 and 2 *Ph.* and *M.* In Q. *Elizabeth*'s time we find none; but in this Catalogue Mr. *Prynne* (*e*) hath truly noted, That the Biſhop of *Rocheſter* was not made Preſident of the Kings Council, but of the Prince's, and was his Tutor, as appears by the Patent it ſelf there cited, dated the 10*th.* of *Nov.*

(*d*) 4. *Inſtit. c.* 2. *fol.* 55. 1. *par. Pat. num.* 22. *John* Biſhop of *Norwich* is mentioned 7 *Jo.* by *Matt. Paris*, *fol.* 205.

(*e*) *Animadv. p.* 45. *Pat.* 13 *E.* 4. *part* 1. *m.* 3.

This Office of Lord Preſident was never granted but by Letters Patents under the Great Seal, *durante beneplacito*. In the Statute of 21 *H.* 8. *c.* 2. he is ſaid to be attendant on the Kings moſt Royal Perſon; the reaſon of which, ſaith Sir *Ed. Coke*, is, That of latter times he hath uſed to report to the King the Paſſages, and the State of the buſineſs at the Council Table.

Lord Privy-Seal.

The Lord Privy Seal is the next Principal Perſon that hath Precedence in the Kings Council, concerning whoſe Office my Lord (*f*) *Coke* hath diſcourſed at large, to whom I muſt refer the Curious Reader, as alſo to him for the Acts of Parliament, Orders of the ſame, and Acts of Council (together with Mr. *Prynne*'s (*g*) Animadverſions) whereby the Privy-Council was to be regulated; and concerning the Juriſdiction, and Proceedings of the Kings Council, Mr. *Lambard*'s (*h*) *Archaion*, and Mr. *Crompton*'s Juriſdiction of Courts may be conſulted; the ſeveral Bundels of Petitions to the King and his Council in the Tower of *London*, and the Anſwers to them, the *Placita Parliamentaria coram Rege & Concilio*, in the Tally Office of the Exchequer, and in the Parchment Book of them in the *Tower* under King *Edward* the Firſt, printed by Mr. (*i*) *Ryley*.

(*f*) 4. *Inſtit. c.* 2. *fol.* 56.

(*g*) *P.* 45.

(*h*) *P.* 108. *to* 116. *fol.* 29.

(*i*) *In. Placit. Parl. & Append.*

Thoſe ſummoned to Parliaments as Aſſiſtants, called the King's Council, and in Parliament-time joyned with the King's Council in ſeveral Caſes.

Of this Privy Council there ſeems to me to be two ſorts, one conſtantly attending the King, and his Affairs, the other in Parliament time only; which had their particular Summons, as I have before at full diſcourſed of: and theſe two I find ſo obſcurely diſtinguiſhed, that it is difficult in ſome places to underſtand which are meant; but I think in time of Parliament theſe were joyned to the Kings Council; for beſides that they had a diſtinct Summons, and in them (as a ſpecifical diſtinction) the word *cæteris* was omitted, in that part of the Summons which runs, *dictis die & loco perſonaliter interſitis nobiſcum, ac cum cæteris Prælatis, Magnatibus*, &c. becauſe they were not Parliamentary Barons, there was alſo added in proceedings and judgments upon them, theſe words, *coram ipſo Domino Rege & ejus*

ejus concilio ad Parliamenta ſua, or, *ad Parliamentum ſuum*, or *coram Concilio noſtro in præſenti Parliamento.*

For the particular Inſtances of which, being they are very numerous, Mr. *Prynn*'s (*k*) brief Regiſter may be conſulted, wherein it ſeems to me upon the peruſal of the ſeveral Records, that theſe Aſſiſtants to the Houſe of Lords were likewiſe joyned to the reſt of the Kings ſtanding Council in Parliament time: ſo it is expreſſed in the Caſe of (*l*) *John Salteyn* and *Margaret* his Wife, and *Iſabel* her Siſter, Daughters and Heirs of *Robert de Roſs de Werk*, thus, *Habito ſuper præmiſſis diligenti tractatu, per ipſum Dom. Regem, & totum Concilium*: and in the ſame it is thus alſo worded, *videtur Dom. Regi, & Concilio ſuo, & concordatum eſt, & conſideratum per ipſum Dom. Regem & Concilium ſuum.* So in others, *per Concilium Archiepiſcoporum, Epiſcoporum, Comitum, & Baronum, cæterorumque* (*m*) *de Concilio ſuo exiſtentium, & ſingulis de Concilio ſuo, & totius Concilii Domini Regis.* So in 21 *E.* 1. the Archbiſhop of *York*'s Caſe: *videtur Domino Regi in pleno Parliamento prædicto, Comitibus, Baronibus, Juſticiariis & ſimiliter toti Concilio ipſius Dom. Regis*; and ſo it is ſaid, *Magnates & alios de Concilio ipſius Domini Regis rogavit.*

(*k*) *A pag.* 363. *ad pag.* 393.

(*l*) *Idem, pag.* 378.

(*m*) *Idem, pag.* 380.

This is further cleared by ſundry (*n*) Prefaces to, and paſſages in our Printed Statutes, as formerly I have noted; So the Statute of *Bigamy* 4 *Oct.* 4 *E.* 1. ſaith, In the preſence of certain Reverend Fathers, Biſhops of *England*, and others of the Kings Council, the conſtitutions under written were recited, after heard and publiſhed before the King and his Council; for as much as all the Kings Council, Juſtices, and others did agree. So the Statute of *Quo Warranto*, 30 *E.* 1. *Cum apud Weſtminſter, per nos & Concilium noſtrum proviſum.* So 33 *E.* 1. it is agreed, and ordained by the King, and all his Council. So 42 *E.* 3. *c.* 3. the Statute made on Petition of the Commons in Parliament begins, (*o*) *Pleaſeth it our Lord the King, and his good Council, for the better Government of his People, to ordain.*

(*n*) *Idem, pag.* 383. The Court of *Star-chamber* was ſaid to be *coram Rege & Concilio ſuo.* See *Coke Inſt.* 4. *c.* 5.

(*o*) *Pleſe a noſtre Seigneur le Roy, & ſon bon Counſel, pur droyt Governement de ſon Peuple, ordeigner.*

By great ſtore of Records it is apparent, that in old times, the Kings and their Councils gave Judgment in divers Caſes of difficulty; and other Common Caſes, concerning the Law of the Realm, (*p*) calling thoſe who were learned in the Laws, for Aſſiſtants therein, as *Mich.* 53 and 54 *H.* 3. *rot.* 37. in the Caſe of Aſſiſe of *Mort d'aunceſter* brought by *Alexander* King of *Scots*, againſt *John de Burgo.* But as hereafter I ſhall ſhew, much of the Power of the Kings Council is now taken away.

(*p*) See 11 *H.* 4. *num.* 28. & 63. *Reſpectuatur per Dom. Principem & Concilium.* *Pryn. Animadv. p.* 39. 264, 265, 267, 296,

The Fourth Council of the King, are the Kings Judges at Law, who are his Council at Law in all Caſes wherein he hath occaſion to conſult them, as appears in the Law Books, and particularly may be found in (*q*) Sir *Edward Coke*, of which I may have occaſion to ſpeak in the Chapter of Judges.

The King's Council at Law.

(*q*) 1. *Inſtit. lib.* 2. *cap.* 10. *ſect.* 164.

I thought to premiſe theſe things for the better underſtanding of the differences of the Kings ſeveral Councils, and ſhall now proceed to diſcourſe of the moſt Honourable Privy Council in general, as Counſel is neceſſary for Princes to have, and

as they ought to be qualified, what their Office and Imployment is, and ought to be, both in Relation to all Princes Secret Councils, and particularly, according to the conſtitution of *England*, according to my poor Abilities.

The moſt Honourable Privy-Council conſiſts of Noble and Wiſe Perſons, choſen by the Prince to aſſiſt him with their ſage and faithful Advice, in the weighty Affairs of Government.

Kings cannot by their own perſonal knowledge comprehend (*r*) all things, therefore it is needful for them to aſſume others in *participationem curarum*; eſpecially great and weighty Affairs need great Coadjutors, as *Paterculus* (*s*) well notes; and the * grave Hiſtorian tells us, That Labours of Princes, by which they manage their vaſt Countries, need helps; that being free from Domeſtick Cares, they may conſult for the Publick. Whoever looks only upon the Port and Grandeur of Princes, their ſoft Raiment, and feeding delicately, may think it a pleaſing and deſirable State; but they never reflect on the anxious Cares, the difficulties of managing Matters, upon which great and momentous events, and ordering of vaſt bodies, of different Intereſts, depend. Therefore the (*c*) Philoſopher well noted, That to give give good Counſel is one of the Divineſt things among Men. Whereas on the other Hand, when Counſel is ſupine, Government muſt be tottering; but a Mind (*u*) ſetled in Reſolves, ſafely attempts any thing. That Reaſon being the ſoundeſt, which uſeth Cunctation and Deliberation, and forefears as well as foreſees, what will happen; becauſe in acting, it will produce Confidence. For there muſt be a great Defect, where Counſel is not taken before Action; It being for Sword-Players, not thoſe that bear the Sword of Magiſtracy, *In arena Conſilium capere.*

(*r*) *Nec unius ne item, tantæ molis eſſe capacem*, Tacit. 1. Annal.

(*s*) *Magna negotia magnis egere adminiculis.* Velleius, l. 2.

* *Principis labores queis orbem terræ capeſſit, egere adminiculis, ut domeſtica cura vacuus, in commune conſulat.* Tacitus 12. Annal.

(*c*) *Rhetor. ad Alex.*

(*u*) *Animus qui verum ſcit, ſcit tuto aggredi.* Thucyd. l. 1.

As to the uſe of Counſellors, (*w*) *Vegetius* tells us it becomes a Prince to treat of thoſe things which ought to be conſidered with many; but thoſe which are to be executed, with few, or rather by himſelf: agreeable to which, is what the learned Lord (*x*) Chancellor notes, That ſome Affairs require extream Secrecy, which will hardly allow to go beyond one or two Perſons, beſides the King; neither are thoſe Councils unproſperous: for beſides the Secrecy, they commonly go on conſtantly in one Spirit of Direction, without Diſtraction; but ſuch are only to be uſed by a prudent King, who can grind with an Handmill.

(*w*) *Quod fieri debet tractato cum multis; quod facturus es, cum pauciſſimis & fideliſſimis.* Lib. 3. de Re militari.

(*x*) *St. Alban's* Eſſays, *p.* 88.

A great part part of the (*y*) Skill of a Prince is diſcovered in the choice of wiſe Counſellors; and the managing of their Counſels, require the greateſt Addreſs, Ability, and Dexterity of Sovereigns.

(*y*) *Idem, p.* 87.

Therefore the Antients feigned *Jupiter* to marry (*z*) *Metis, viz.* Counſel, and ſhe being with Child by him, he eat her up, and was delivered of *Pallas* out of his own Head: The Moral of which is, That Princes refer matters to Council; and when the

(*z*) *Idem.* Wiſdom of the Ancients. Princes to have the Honour of Councils.

Council

Council grows ripe, they are not to ſuffer their Council to go through with the reſolution and direction, as if it depended on them; but to take matters back again into their own Hands, and ſo make them appear to iſſue from themſelves, with Prudence and Power, as from their own Head and Advice, as *Pallas* came forth armed, fitted for preſent Action.

Choice of Perſons.

It is in vain for Princes to take Counſel concerning matters, if they take not Counſel likewiſe concerning Perſons; for the greateſt Errors are committed, and the moſt Judgment ſhown in Individuals.

There was never King bereaved of the Benefit of Counſel, except when there hath been an over greatneſs in one Counſellor, or an over-ſtrict Combination in divers: which are things ſoon found out, and helped; therefore *Principis maxima eſt virtus noſſe ſuos.*

Princes not to open their Inclinations too much.

In Council the King preſiding, ſhould not open his own Inclination too much in that which he propoundeth, if he deſire ſincere delivery of the Counſellors Judgments, leſt his Authority ſway too much. Therefore Princes ſhould take the Opinion of their Council, both ſeparate, and together; private Opinion being more free, and Opinion before others more reverend.

It is therefore a Prince's greateſt Intereſt to be unprejudicate, and to keep an open Ear to all wholeſome Counſel; for as *Capitolinus* (*a*) ſaith, *Miſer eſt Imperator apud quem vera reticentur*, That Prince is in a very bad Condition, from whom the true Eſtate of his Affairs is concealed.

(*a*) *In Gordiano Juniore.*

Making uſe of Counſellors of different Perſwaſions or Intereſts.

Several wiſe Princes have with an even Hand diſtributed their regards to Counſellors that have mortally hated one another, as ſome obſerved in *Louvoy* and *Colbert*; and it is a certain ſign of a good Workman, that can work with any Tool. The advantage a Prince hath, is that they are Spies one upon another, and will be both æmulous, who can do their Maſters Services beſt; but if they grow to be the Heads of different Factions, they will prove moſt dangerous.

Having thus far proceeded as to the Intereſt of a Prince, in his Counſellors, and their advice, I ſhall ſpeak to the Qualifications of Counſellors.

(*b*) *Leo Imp. de Belli apparatu.*

The Qualifications of Counſellors.

In (*b*) ſecret affairs, faithful, temperate and cloſe Perſons, are moſt fit Counſellors, and who have no private Intereſt; for Secrecy is that inviſible Claſp that buckles great Affairs, the hidden hinge, upon which they are moved, according to (*c*) *Valerius*. For he can never atchieve great matters, to whom it is irkſome to retain Secrets. So *Æmilius Probus*, amongſt the praiſes of *Epaminondas*, relates, that he was *Commiſſi celans*: and *Albertus* King of *Poland* ſaid he would change his Shirt, if he thought it were privy to his Counſels.

(*c*) *Taciturnitas optimum ac tutiſſimum rerum adminiſtrandarum vinculum.* Lib. 2. c. 21.
1. Secreſie.
2. Ability.

He is a leading eminent Man (ſaith (*d*) *Livy*) who is able to give Counſel; and Second unto him, is he that yields to good Counſel; but he is in the loweſt form of Wit, who neither can give good Counſel, nor obey it.

(*d*) *Eum primum eſſe virum qui ipſe conſulit quod in rem ſit; ſecundum eum qui bene monenti obediat; qui nec ipſe conſulere, nec alteri parere ſcit, eum extremi eſſe ingenii.* Lib. 2.

The

3. Skill in a Prince's Affairs.

The true Compoſition of a Counſellor, (ſaith my Lord St. *Albans*) is rather to be skilled in his Maſters Buſineſs than his Nature; for then he is like to adviſe him, and not to flatter him, and find his Humour. For Knowledg and Prudence in affairs, are principally requiſite in Counſellors, who ſhould be well acquainted with the (e) Conſtitution of the Government, the Laws, Rules, and Policy of it; both to be able to adviſe in all things relating to his Princes managment of matters at home and abroad: (f) *Mores animoſque Provinciæ quærere*, To be curious to dive into the Spirits, manners, and Diſpoſitions of all thoſe his Prince hath to deal with; whereby he may the better ſuit his Maſters occaſions, by humouring and timing every thing with a quiet Induſtry, and making every matter be adapted to his end, without tumultuation, and rude Shocks, but rather by inſenſible Screws.

(e) *Ad concilium in Republica dandum caput eſt noſſe Rempublicam.* Cic. de Orat.

(f) *Tacitus vita Agricolæ.*

4. Not to aim at private Profit.

The nobleſt deſign and endeavour any Privy-Counſellor can have, is to ſerve his King and Country upon Principles of publick advantage; for it is the worſt of Poyſons to the Judgment, and regards to Truth in all Conſultations, to aim at private Profit, according to that Excellent remarque of (g) *Tacitus*, That private deſign of Profit is the worſt Poyſon of Judgment, and attaining Truth. For when private Profit holds the Ballance, the Princes Standard is little regarded; there being no weight ſo deadly heavy, as when a Man's ſelf, and his private Intereſt are caſt into one Scale.

(g) *Peſſimum veri affectus & judicii venenum ſua cuique utilitas.* 1. Hiſt.

5. Uprightneſs and Faithfulneſs requiſite.

Uprightneſs and Faithfulneſs are two Maſter Ingredients in all Counſellors. So *Pliny* (h) tells *Trajan*, That he is the beſt Man that is moſt faithful to his Truſt; for by the Eyes of Counſellors, Princes ſee, by their Ears they hear, and if thoſe Organs be depraved: the Princes Apprehenſions of things muſt be adulterated; and the King paſſing his Judgment according to their Repreſentation, may proceed upon very uncertain or falſe Grounds. Counſellors indeed are the Speculators of Princes, they have therefore need of the cleareſt Sight, not to be tainted with falſe Colours; they are to be quick-ſighted, to pry into the Conſequences of Things while in the obſcure Shop of the Firſt Cauſes: they are the Pilots that are appointed to ſteer the Ship of the Commonwealth, and ſo muſt be skilled in the Chart, to know to veer and change with Emergencies; to know the rolling Sands, and under-Sea-Rocks; to know the Coaſt and Creeks, the Meaſure of all things relating to the Government, both preceding, by-paſt, and to come.

(h) *Optimum eum quemque, fideliſſimum.* Panægyr.

6. To purſue the Deſign of the Prince by ſeveral ways.

The (i) moſt politick Hiſtorian notes, That a wiſe Counſellor, though he may paſs in ſeveral Tracts, yet muſt never be out of that Path which will lead him to the accompliſhment of his Deſigns; and in the neceſſary Traverſes he muſt make, not to be found ſo much to change, as to ſuit himſelf to the Work he is about.

(i) *Sapiens Non ſemper in uno gradu, ſed in una via, nec ſe in aliquibus mutat, ſed potius aptat.* 3. Hiſtor.

7. To leave the Prince the Honour of Counſels.

It is a great piece of ſelf-denying Wiſdom in a Counſellor that deſires to keep his Station, to leave to his Maſter the Honour

nour of the contrivance of thoſe advantagious things he ſuggeſts:

——*Aliis* (k) *magni reputantibus, ipſe*
Negligit, & modico factum metitur honore.

(k) Guntherus.

So *Agrippa* admoniſheth thoſe that would be ſafe in Courts, to eſchew the difficulties of things, and leave the glory of the accompliſhment of them to thoſe that have the Supremacy.

8. Not to be too curious in prying into their Maſter's Secrets.

It is too hazardous a curioſity in ſome Princes Counſellors to enquire into the hidden ſence of their Maſters, or what they reſerve in their own dark thoughts: It being difficult to attain the meaning of what they leave doubtful, according to that of the curious Author, It is doubtful and unlawful to enquire into the hidden Sence of a Prince, or what he more curiouſly deſigns.

(l) *Abditos Principis ſenſus, & ſi quid excultius parat, exquirere inlicitum anceps.* Tacit. lib. 6. Annal. c. 2.

But this falls out only under a *Tiberius*, or ſome Myſterious Prince; though it may happen under a Good and Wiſe Prince, who to leave the greater liberty of Debate, diſcovers not his own inclinations: and under ſuch an one Counſellors are ſafe, eſpecially when by conjectural Inferences they promote the end, though they may differ in the *medium*.

9. Liberty, Faith, and Truth requiſite in a Privy-Counſellor.

Pliny ſaith, (m) three things are required in a Counſellor, Liberty, Faith, and Truth.

Liberty is the Life and Eſſence of Council, which being taken away, all Counſel vaniſheth; for as good Counſel is the Soul of the State, ſo he that hath not a Liberty (being bound by private Intereſt) is but a Palſied Member; and if Counſellors want Faith and Verity, they hide and diſguiſe the Truth, which is full of danger both to the King and (n) themſelves.

(m) *In Conſiliario Principis tria maxime requiruntur, libertas, fides, & veritas: libertas conſilii eſt ejus vita, & eſſentia; qua erepta, conſilium evaneſcit.* Panægyr.

(n) *Malum conſilium conſultori peſſimum.*

Such fear as doth not fall in *conſtantem virum*, is a great enemy to good Counſel; for fear is a betraying of ſuch ſuccours as Reaſon and Counſel ſhould afford.

(o) Coke 4. *Inſtit. c.* 2. Four Properties of Counſellors.

King (o) *Edward* the Third would have his Counſellor to have four Properties: 1. To be *Parcus ſui*, knowing he would never be provident for Him, that would not be a good Husband for himſelf. 2*ly*. That he ſhould not be *Cupidus rei alienæ*, no covetous or greedy man; for *ei nihil turpe, cui nihil ſatis*. 3*ly*. That he ſhould be *Avarus Rei Publicæ*, covetous for the Kings Treaſure and Commonwealth. 4*ly*. That he *ſuper omnia ſit expertus*, that he be expert in what place the King ſhall imploy him; for great Offices are never well managed by a Deputy, where the Officer himſelf is but a Cypher.

When quick, and when deliberate Counſels are beſt.

As to Counſels themſelves, *Livy* (p) excellently notes, That in matters that are ground to an edge, or drawn to a ſharp point, and where hope is only left in the bottom, the boldeſt and quickeſt Counſels are ſafeſt; yet it muſt be with great circumſpection well conſidered, when, and upon what occaſions ſuch Counſels muſt be taken: for the ſame (q) Author notes elſe-

(p) *In rebus aſperis, & tenuis ſpei, fortiſſima quæque conſilia tutiſſima ſunt.* Lib. 22.

(q) *Conſilia calida & audacia prima ſpecie læta ſunt, tractatu dura, eventu triſtia.* Idem, lib. 31.

elſewhere, That ſubtile and bold Counſels on the firſt view may be pleaſing, but are difficult in handling, and in the event often Calamitous: therefore raſhneſs can never conſiſt with Counſel; *duo adverſiſſima rectæ menti* (ſaith (*a*) *Thucydides*) *Celeritas & Ira*, Haſte and Paſſion are of all things moſt oppoſite to Right Counſel: therefore *Curtius* (*b*) ſpeaking of ſuch, ſaith, Fiery and furious Spirits are more fit to innovate things, and create Factions, than to manage Affairs ſteddily. (*c*) So haſty Counſels are rarely proſperous, becauſe Reſolution ſhould never go before Deliberation, nor Execution before Reſolution.

(*a*) *Lib.* 3. *Male cuncta miniſtrat impetus.* Statius.

(*b*) *Novandis quam gerendis rebus aptiora ingenia illa ignea.*

(*c*) *Præpropera conſilia ſunt raro proſpera.*

When (*d*) upon Debate and Deliberation it is by the Council-Table well reſolved, the change thereof upon ſome private information, is neither ſafe nor honourable, nor that after timely Reſolution timely Execution be delay'd.

(*d*) *Priuſquam incipias conſulito, & ubi conſulueris, mature facto opus eſt.* Salluſt.

Violent (*e*) courſes are like to hot Waters that may do good in an extremity; but the uſe of them doth ſpoil the Stomach, and it will require them ſtronger and ſtronger, and by little and little they will leſſen their own operation.

(*e*) *Coke Inſt.* 4. *p.* 57.

To leave this great Theme as too illuſtrious and ſublime a Subject for one to treat of that hath lived in the Shade: I ſhall now proceed to make ſome other remarks why our Laws give our Kings the ſole power of chuſing to themſelves a Privy-Council, and how the deſigners of 41. would have wreſted that Power from the King.

(*f*) Review of Obſervations, *p.* 10. The King's Prerogative to chuſe his Privy-Council.

Beſides (*f*) what is common to all men to have a free liberty to whom they will impart their private Affairs, and deſire Counſel upon them; our Laws being built upon firm foundations of reaſon, conſidering, that in the power of making of Laws, the power of two numerous bodies were oppoſed againſt the Perſon of the ſingle Soveraign: it foreſaw, and found, that by the Soveraigns conſenting to Laws, for the eaſe and benefit of the Subject, things might paſs to the prejudice, and diminution of the Soveraignty. If his ſingle Perſon (ſurcharged with the care of the manifold Affairs of the Kingdom) ſhould be left all alone to adviſe, and diſpute his right, againſt all the Wiſdom and Solicitation of the Repreſentative Body of the Subject. Therefore, to prevent that, it ordered, That the King ſhould at his diſcretion ſwear to himſelf a Body of Council (ſometimes in our Laws called his Grand Council) to adviſe him in matters of State, and concernments of his Soveraign Right and ſafety; and a Body of Council at Law to adviſe him in matters of Juſtice, that he might neither do, or ſuffer contrary to the Rule of Laws; eſpecially ſitting the two Houſes, when the wrong might be perpetual: and ſeeing the Government muſt be continually upon its Guard and Watch, without intermiſſion, molding, and forming all things for its ſafety and proſperity, and conſequently of the Peoples; this Council muſt be conſtantly attending upon the Kings pleaſure, and daily and hourly conſidering the beſt ways and methods

See *Prynne*'s Brief Regiſter, *ſect.* 3. from *p.* 341. to the end, concerning the King's Council in Parliament, and out of it.

thods of promoting the Kings and Commonweals advantage.

As to the (*g*) firſt particular, we find it frequently in ſeveral Statutes expreſſed, That the King by himſelf and by his Council, at his Parliament, made and ordained. That this was not the great Council of Parliament appears by that of *Edward* the Firſt, (*h*) Theſe are the Eſtabliſhments of the King by his Council, and by the Aſſent of the Archbiſhops, Biſhops, Abbats, Priors, Earls, Barons, and the whole Commonalty of the Land thither ſummoned: and *Edward* the Second ſaith, he cauſed the *Articuli Cleri* to be rehearſed before his Council, and Anſwer given, *&c.* and much more may be obſerved in the Acts of the great Councils, not fit here to be repeated. From hence it is that the Law defines, The King can do no wrong; for if any evil be committed in matter of State, the Privy-Council, and if in matters of Law, the Juſtices and Judges muſt anſwer for it.

(*g*) *Pulton*, 37. & 56. 72. The neceſſity of a Privy-Council.

(*h*) *Idem*, *p.* 80.

Privy-Counſellors reſponſible.

As to the ſecond particular, the Parliament of 1641. caſt the *odium* of moſt of the management of Affairs of State, that were ungrateful to them, upon the Kings evil Counſellors, as they called them: which was a great artifice of the deſigners of that Rebellion; for thereby (being then not hardned enough to caluminate the King openly) they would make the World believe they paid a juſt deference to his Majeſty: yet ſlily wounded his Reputation through his Counſellors ſides, leaving the application to the People. Tacitly inſinuating, that the King being mis-led by ſuch Councils, was not ſo Juſt, or Wiſe, as to be wiſhed: and when afterwards they had got Power, they always made it one of their propoſitions, That the two Houſes ſhould have the nominating, or approving and removing the Privy-Council, or great Officers of State; pretending they would ſet ſuch juſt and righteous Perſons in thoſe places, as would execute them for the publick good only: and upon the ſame ſcore (though on another pretence) they were importunate, that the Judges ſhould hold their places *tam diu quam ſe bene geſſerint*, rather than be removeable at the Kings pleaſure. Thus by vote, without legal proof of Crimes, they blackned as many of the Kings Privy-Council as they foreſaw would thwart their deſigns, as Seducers of the King, and men of Arbitrary Principles; thereby to have them wholly removed from him (as we have had Addreſſes of a later date from an Houſe of Commons againſt ſome great wiſe and Loyal Lords) by which ſevering from him ſuch a body of his faithful Adviſers, and dangerouſly depriving him of the conſtant means (which the Law hath ſpecially ordained him for his ſupport) ſome of them endeavoured to get into their places, as was notoriouſly known to have been propoſed, that if ſeveral of the leading men might have had chief places and honours, they would have let the Earl of *Strafford* live (as in another Treatiſe I hope to make clear) and by that means not only have enriched themſelves, but have had the guidance of Affairs

The Votes of the Long Parliament to traduce the King, under the pretence of uſing Evil Counſellors.

That the two Houſes ſhould have the nominating of Privy-Counſellors.

So in *Henry* the Third's time we find *Mountfort*'s Model of Twenty four to redreſs the Kingdom, to chuſe Counſellors, *&c.*

Their Deſign to remove ſome Privy-Counſellors, that ſome of their Party might be introduced.

of State, and ſo by little and little brought about the Promotion of their friends, without regard to the Publick.

The Miſchiefs that would follow upon the Parliaments nominating Privy-Counſellors.

If we impartially conſider the unreaſonableneſs of this propoſal, we ſhall find, that by granting it, we muſt expect to ſuffer all the evils which Faction can produce. This were the ready way to kindle a fire in our bowels, which would firſt break out in our Country Elections, and divide the Families by irreconcileable hatred. For it cannot be imagined but that Power would bandy againſt Power, and Relations againſt Relations, to put a Son or Kinſman into the road to preferment; nor could the flames be quenched, but burn more vehemently even in the houſe: to which the inſolence of ſome (obtaining Offices to which they are not fit) the ſhame and diſcontent of others repulſed, and the ambition of all, would be continual fuel; and the greateſt miſery of all would be, that were the corruption never ſo great, we could have but ſlender hopes of redreſs, ſince the prevailing Party (jealous of their honour) would conſtantly maintain their choice; and perhaps it would be neceſſary for them, one to wink at another, as it was manifeſtly ſeen in the long Parliament, when the moſt known Offenders, and active Inſtruments of the Peoples miſeries, by ſtriking in with the prevailing Party, were more ſafe than innocency could make them.

See Anſwer to Obſervations.

(*i*) 17 *Car.* 1. *c.* 10. The Limitations of the Power of the Privy-Council.

It is enacted by King (*i*) *Charles* the Firſt, that neither his Majeſty nor his Privy-Council have or ought to have any Jurisdiction by Engliſh Bill, Petition, Articles, Libel or any other Arbitrary way whatſoever, to examine or draw into queſtion, determine, or diſpoſe of the Lands, Tenements, Hereditaments, Goods or Chattels of any of the Subjects of this Kingdom; but that the ſame ought to be tried and determined in the ordinary Courts of Juſtice, and by the ordinary courſe of the Law.

(*k*) *Rot. Par.* 5 *H.* 4. *num.* 14. *Fleta, lib.* 1. *c.* 17. Firſt Particular of a Privy-Counſellor's Oath.

In the Oath of a (*k*) Privy-Counſellor, his duty is beſt manifeſted. Firſt, That he ſhall as far forth as cunning and diſcretion ſuffereth, truely, juſtly, and evenly counſel and adviſe the King, in all matters to be commoned, treated and demanded in the Kings Council, or by him as the Kings Counſellor. Therefore *Henry* the Eighth wiſht that his Counſellors would commit ſimulation, diſſimulation and partiality to the Porters Lodg, when they came to ſit in Council.

Second Branch, Uprightneſs.

Secondly, That in all things generally which may be to the Kings honour and behoof, and to the good of his Realm, Lordſhips and Subjects (without particularity or exception of perſons, not fearing or eſchewing ſo to do for affection, love, meed, doubt or dread of any perſon or perſons) that he ſhall with all his might and power, help and ſtrenghthen the Kings ſaid Council, in all that ſhall be thought good to the ſame Council for the univerſal good of the King and his Land, and for the peace, reſt and tranquillity of the ſame. Therefore my Lord

Lord *Cook* (*l*) ſaith, theſe Counſellors, like good Sentinels, and Watchmen, conſult of, and for the publick good, and the honour, defence, ſafety, and profit of the Realm: they are his true Treaſurers, and profitable Inſtruments of the State.

(*l*) *Inſtit. par.* 4. *fol.* 53.

Thirdly, That he ſhall keep ſecret the Kings Counſel, and all that ſhall be commoned by way of Counſel in the ſame; without, that he ſhall not common it, publiſh it or diſcover it by word, writing, or in any otherwiſe to any perſon out of the ſame Council, or to any of the ſame Council if it touch him, or if he be party thereof. So *Valerius M.* (*m*) ſaith, Nothing is more to be deſired, than that the Counſels of things to be done, as much as poſſible, be ſecreet. So *Vegetius* (*n*) hath of old pronounced, That no Counſels are better than thoſe which the Adverſary is ignorant of before they be executed: for unleſs Counſel be hidden and ſecret, they rarely attain their end.

Third Branch, Secreſie.

(*m*) *Nihil magis optandum quam ut rerum gerendarum conſilia, quoad ejus fieri poterit, quam maxime occulta ſint.* Lib. 4.

(*n*) *Nulla ſunt meliora conſilia quam quæ ignoraverit adverſarius antequam facias. Conſilia niſi ſunt abſcondita, exitum raro proſpiciunt.* Lib. 3. de Re militari.

Fourthly, That (*o*) he ſhall not for gift, meed, nor good, nor promiſe of good, by him nor by means of any other perſon, receive or admit, for any promotion, favouring, nor fordeclaring, letting or hindring of any matter or thing to be treated, or done in the Council. Therefore the part of a Counſellor is, *Tu civem patremque geris, tu conſule cunctis—Non tibi, nec tua te moveant, ſed publica vota.*

(*o*) *Rot. Pat.* 11 *H.* 4. *num.* 28.

Fifthly, That he ſhall withſtand any perſon or perſons, of what condition, eſtate or degree they be of, that would by way of feat, attempt or intend the contrary to the good of the King, peace of the Land, *&c.* and generally that he ſhall obſerve, keep, and do all that a good and true Counſellor ought to do to his Soveraign Lord.

CHAP. XXXI.

Of Miniſters of State.

I Joyn to the Privy Council Miniſters of State, being they differ from them very little; ſome in name, others in degrees. For there (*a*) are ſeveral qualifications of Subjects that ſerve a Prince. As firſt, thoſe that are *participes curarum*, upon whom Princes diſcharge the greateſt weight of their Affairs, as Miniſters of State, and Privy-Counſellors. Secondly, *Duces Belli*, ſuch as Princes imploy in their Armies and Militia. Thirdly, *Gratioſi*, Favourites, ſuch as are a ſolace to the Prince, and harmleſs to the People. Fourthly, *Negotii pares*, ſuch as not only have great places under the Prince, and execute them ſufficiently, but alſo Judges and all ſorts of Magiſtrates. For as *Plutarch* well obſerves, As the Maſter of the Ship chuſeth the beſt

(*a*) *St. Alban's* Eſſays, *tit.* Honour and Reputation.

The ſeveral Qualifications of Miniſters of Princes.

The Prince's Care in chuſing his Miniſters.

beſt Mariners, the Architect the beſt workmen; ſo a Prince ſhould imploy thoſe that are fit to adminiſter the Affairs of the Commonweal (*b*). Generally it is requiſite that Princes chuſe ſuch as are more ſenſible of duty than of riſing, and ſuch as love buſineſs rather on Conſcience than upon Bravery: and it is fit to diſcern a buſie nature from a willing mind; for ſome are impatient of privateneſs, ſaith my Lord St. *Albans*, even in Age or ſickneſs; like old Towns-men, that will be ſtill ſitting at the ſtreet-doors, though thereby they offer Age to ſcorn.

(*b*) *Ut Gubernator optimos quærit Nautas, Architectos doctiſſimos Miniſtros; ita Principes eos aſciſcunt, qui ad Rempublicam adminiſtrandam ſunt idonei.*

Therefore as it is neceſſary that Miniſters of State ſhould be ſubſervient to the Soveraign; ſo it is moſt requiſite that a Prince ſhould be careful in his choice of ſuch as may moſt beneficially ſerve him and the Publick. Some ſeem fit for Imployment, and yet in places diſappoint expectation. *Omnium conſenſu capax imperii niſi imperaſſet*, ſaith (*c*) *Tacitus* of *Galba*; That in the opinion of all he was capable of Empire, if he had not diſcovered his inſufficiency when he was Emperor. Therefore it is noted as a good Character of *Piſo* (*d*), That none more vehemently loved receſs from buſineſs, or with more eaſe underwent imployment, or effected thoſe things, which were to be done, more actively and without any oſtentation. So (*e*) *Tacitus* ſaith of *Otho* when he governed *Portugal*, that he was one looſely given, when he had little to do; but in Office and Rule, more ſtayed and temperate. Such a perſon is truly qualified for great Managery; it being an aſſured ſign of a worthy and generous Spirit, whom Honour amends: Vertue in the Ambitious being violent, and in thoſe in Authority, ſettled and calm. For Honour is, or ſhould be, the place of Vertue; power to do good being the true and lawful end of aſpiring, and Conſcience of the ſame is the accompliſhment of Mans reſt.

(*c*) So *Tacitus* of *Galba*, *lib.* 1. *Hiſt. Alieno Imperio felicior quam ſuo, vetus in familia nobilitas, magnæ opes, ipſi medium ingenium, magis extra vitia quam in virtutibus. P.* 197. *Edit.* 5. *Lipſ. Major privato viſus, dum privatus fuit.* 1. *Hiſt. c.* 11.

(*d*) *Quo nemo validius otia dilexit, aut facilius ſuffecit negotia, magiſque quæ agenda ſunt egit, ſine ulla oſtentatione agendi.* Velleius Paterc. *Actu otioſo ſimillimus.*

(*e*) *Annal.* 13. *Edit. Lipſ.* 5. *p.* 138. *Integre ſanctèque egit, procax otii, & poteſtatis temperantior.*

Men in great places (ſaith one (*f*) who made a great figure in his time) are thrice Servants: Firſt to their Soveraign or the State. Secondly, Servants of Fame. Thirdly, Of buſineſs. So that they have no freedom either in their Perſons, Actions or Time: their riſing is laborious, their ſtanding ſlippery, their receſs either a Downfal or Eclipſe; ſo that they had need borrow other mens opinions to think themſelves happy: for if they judge by their own feeling, they cannot find it; for though *Tacitus* ſaith, *Sunt plerumque Regum voluntates vehementes, & inter ſe contrariæ*; and though they ſerve a more benign Prince: yet they will find many they deal with, either vehement in their Wills, or irreſolved. However the fatigue is ſo much the greater, when the Port cannot be gained without doubling, and tacking to ſave the Wind.

(*f*) *St. Alban's* Eſſays, *p.* 42.

How Great Miniſters are Servants.

The neceſſary Qualifications of Miniſters of State.

Therefore it is moſt neceſſary, that great Miniſters of State have extraordinary Accompliſhments both in dexterity of diſpatch, vaſt comprehenſion, vertuous reſolvedneſs, and prudent cunctation; For as *Pliny* well notes, In moſt matters the Deity hides the ſeeds of things; and moſtwhat the cauſes of good and bad things lye hid under the contrary appearances: So that it requires

Nam occultat eorum ſemina Deus, & plerumque bonorum malorumque cauſæ ſub diverſa ſpecie latent. Panægyr.

requires a great ſagacity in a Miniſter of State, to foreſee what the effects will be, of Cauſes and Councils, when there may intervene ſo many by-accidents, that can neither be foreſeen nor prevented. Therefore not only great wiſdom is required, but great experience; and when Miniſters of State are endowed with theſe qualifications, whatever the event be, yet they are not to be blamed, and moſtly ſuch grounded reſolves ſucceed well: For a wiſe man (*i*) over-rules the Stars. So a Miniſter of State, who with ſufficient ability, Diligence, Care, Fidelity, Prudence, and Affection, ſerves his Prince and his Country (which are no ways incompatible) needs not fear the Detraction of ſome, the mining of others, or an inglorious downfal: for the Government loſeth more by ſuch an ones laying aſide, than he that hath ſerved his Prince Conſcientiouſly, juſtly and wiſely, ſhall loſe. Thoſe whom either their lucky Stars, or conſpicuous accompliſhments have placed within the Circle of the Court, are ſubject indeed to the greateſt danger of inglorious Exits, if they be not the moſt circumſpect of Mortals. For the envious and ambitious (who torment themſelves that they are eclipſed by thoſe who interpoſe betwixt the Sunſhine of the Princes favour) envy them the Glory of Adminiſtration, and by cunning and artificial Inſinuations of ill Conduct, falſe meaſures and deſigns, are aſſiduouſly heaving them out of their places; which if upon falſe Suggeſtions they prevail to effect, by ſucceſſive Removals (under pretence of reforming matters) all things are diſjointed, the Cement of Government diſſolved, and greater Errors committed by too frequent freſh Applications, whereby the Malady is made incurable by the multitude of Phyſicians.

Τῶν καθ' ἕκαστά ἐστιν, ἡ φρόνησις, ἃ γνώσεται μᾶλλον δι' ἐμπειρίας. *Ariſt. 6. Ethic. c. 8.*

(*i*) *Sapiens dominabitur Aſtris.*

Their danger of being ſupplanted.

Πολλοὶ ἰατροὶ ἐμὶ ἀπόλυσιν.

Amongſt other Rules, which Princes may find it convenient to obſerve, in chuſing Miniſters of State; It is one of no ſmall Moment (provided they can be as well fitted) that they (*k*) be of antient Houſes, and perſons of Fortune. For *Tacitus* (*l*) notes, That it is inbred to Men to look aſquint on the Advancements, not ſo much new, as of new Men; who coveting too much Power and Honour, by that means contract Envies. For as he further (*m*) obſerves, The Power that is in Exceſs, is not to be confided in, being moſtwhat Treacherous. Therefore (*n*) *Pliny* adviſeth, That Miniſters of State ſhould take their meaſures by their own, and not their Princes Fortune; for it is a certain Truth, That thePower wears beſt, and is moſt ſtable and durable that is founded upon Vertue, and purchaſed by it, not by any little Arts, Wealth, or Diſſimulation, according to that of *Claudian*,

(*k*) Εἰκὸς βελτίους εἶναι τὸς ἐπ βελτόνων.

(*l*) *Inſita mortalibus natura recentem aliorum fœlicitatem ægris oculis introſpicere.* 2. Hiſt.

(*m*) *Nunquam ſatis fida Potentia, ubi nimia eſt.* Ibid.

(*n*) *Veſtra vos, non Principis fortuna metiamini.* Panegyr.

Nihil rerum mortalium tam inſtabile, & fluxum eſt, quam potentia non ſua vi nixa. Tacit. 13. Annal.

——*emitur ſola Virtute Poteſtas.*

When Miniſters of State deſire to keep their Station, they muſt ſtudiouſly endeavour to avoid Envy and Æmulation, eſpecially, not to give any occaſion by their own Arrogance.

(*o*) *Tacitus*

(o) *Tanta illi comitas in ſocios, manſuetudo in hoſtes, viſuque & auditu venerabilis, cum magnitudinem & gravitatem fortunæ retineret, invidiam & arrogantiam effugerat.* 2. Annal.

(o) *Tacitus* deſcribing the qualifications of *Germanicus* (who had the Command of a great part of the Army, and the management of ſome Provinces) ſaith, That he was courteous and affable to his Companions, merciful and mild to his Enemies, venerable in his Aſpect and Diſcourſes, and that while he retained the greatneſs and Port of the higheſt Fortune, he avoided Envy and Arrogance; which Character will very well become any great Miniſter of State.

Privy-Counſellors are very well to conſider that they are choſen to manage the weighty parts of Government, and eaſe their Prince: but they are not to make it their Buſineſs by little Arts of ingratiating themſelves with their Sovereign, to ſtudy only to get Honour and Wealth, and ſerve a Princes time; but ſo to act, as not only the preſent Prince, but his Succeſſors may feel the advantage of their Adminiſtration, remembring that of *Tiberius*, (p) That Princes are Mortal, but the Government Immortal; which is moſt true in hereditary Monarchy.

(p) *Principes mortales, Rempublicam æternam eſſe.* Tacit. 3. Annal.

(q) *Per cultum & munditias, copiaque & affluentia, luxu propior: Suberat tamen vigor animi, ingentibus negotiis par, eo acrior quo ſomnum & inertiam magis oſtentabat.* Idem, lib. eod.

It is an odd account that (q) *Tacitus* gives us of *Salluſtius Criſpus*, that he imitating *Mecænas*, without Senatorian Dignity, out-ſtripped in Power with the Prince, many of the Conſuls, and ſuch as had triumphed, and that by a different way, than had been before uſed; by richneſs of Garb, delicateneſs, living ſplendidly, even bordering upon Luxury: yet he retained a vigorouſneſs of Mind, fit for great Employments, and ſo much the ſmarter, by ſo much as he ſeemed more ſluggiſh and unactive. Yea he was next to *Mecænas*, on whom the Secrets of the Emperors reſted. But withal he lets us ſee what old Miniſters of State may expect, and what they muſt not be troubled at, if they find happen to them, That in their old Age they retain the Countenance rather of the Princes Friendſhip, than Power, as he expreſſeth it, *ætate provecta ſpeciem magis, in amicitia Principis, quam vim tenuit.*

The Arts of the Long Parliament to remove Miniſters of State.

The State Mountebanks of 1641. (that they might make the Ulcer ſeem greater, and more dangerous for the advantage of larger Application) firſt aggravated the Grievances the People lay under, by the ill Conduct of the prime Miniſters of State, and by the repreſenting a plauſible Idæa of better Government (if they might have the modelling of it) courted by little and little the well meaning, and captivated them with a fair view of its ſpeculative Excellence, whereby their Fancies were raiſed to the expectation of a golden Age, and the cunning and intrieguing Factors (pretending to have no other deſign but to take care of the publick) gained to themſelves the Honourable name of Patriots.

Having thus tickled their Proſelytes, and gained their applauſe, their next work was to pickeer ſome great Officers, and Blackening them with the name of Male-Adminiſtrators, or corrupt Officers, ſlily endeavoured to obtain an Opinion of their own incorruptneſs; whereas their great deſign was only to diſplace ſuch,

ſuch, to make Niches for their own Statues; and when they found it was difficult to get ſuch outed of their Preferments, the People were acquainted that ſuch and ſuch were the only Rubs, and cloſe Enemies to the State: and when they could have no particular Evidence againſt them, then they made the People believe, that ſuch managed their Deſigns ſo much more cloſely and ſecretly, whereby they could get no publick Proof againſt them; and ſo they left them to the Precondemnation of the People, which ſerved for Jury and Witneſſes: and being thus preſented, as ingrateful Monſters to their County, they were baited in every Coffee-houſe, and Ale-bench, till at laſt the loud Cry runs through the Woods and Lawns; and every one was armed to deſtroy thoſe reputed Wolves and Foxes that were believed would deſtroy their Flocks; and all the Umbrages of Mis-Government, the real or imaginary Infelicities, were heaped upon the Animals deſigned for Sacrifice, and they were ſingled for victims to conciliate better times. And thus ſuch Deſigners being proſperous in their Undertakings againſt the great Miniſter of State, the moſt renowned Earl of *Strafford*, (whoſe Fall ſucceeding Ages will never forget) they ſingled out others by way of Impeachment, both Biſhops and Judges, as was moſt conſpicuous in our late Troubles, imitated by the Slingers of *Paris*; which is, and ever will be the uſual Method of all who deſign to introduce a change of Government.

Therefore wiſe Princes, when they have choſen and had Experience of the Ability and Fidelity of ſuch Miniſters of State, are careful to ſhelter them from the Attacques of the Envious and Ambitious.

For theſe of all others ſhould be ſuch as have an humble, dutiful, and diligent Love for their Prince, and his true Service; therefore it is unſafe to abandon them, if ſuch. That of *Micipſa* (r) being moſt true, That neither Armies or Treaſures are ſo ſure Defences of a Kingdom, as true Cordial Friends. So (s) *Pliny* tells *Trajan*, It is the chief work of a Prince to procure Friends.

Of ſuch as theſe it is that (t) *Salluſt* ſaith, he hath found that all Kingdoms, Cities and Nations, have had Proſperous Empire, while true Councils have prevailed; but where Favour, Fear, or Pleaſures have corrupted them, they have grown poor, and loſt their Rule.

Above all, Princes ſhould avoid Flatteries; for theſe always give them the wrong end of the Perſpective: therefore (u) *Tacitus* gives that Commendation to *Lepidus*, That he converted moſt things to the better, from the cruel Flatteries of others, and yet needed no attemperament, for that he continued in equal Authority and Favour with his Prince: and of *Cornelianus Piſo* * he ſaith, *Nullius ſervilis Sententiæ ſponte Auctor, & quoties neceſſitas ingrueret, prudenter moderans*; He never was willingly Author of any ſervile Opinion, and as often as there was need, he prudently moderated.

(r) *Non Exercitus, neque Theſauri, præſidia Regni ſunt, verum amici.* Sall. Jug.

(s) *Præcipuum Principis opus eſſe amicos parare.* Panægyr.

(t) *Ego ita comperi, omnia Regna, Civitates, Nationes, uſque eo proſperum Imperium habuiſſe, dum apud eos vera conſilia valuerunt: Ubicunque gratia, timor, voluptas, ea corrupere, poſt paulo imminutæ opes, deinde adempium Imperium.* Salluſt. ad Cæſarem.

(u) *Pleraque ab eo vis, adulationibus aliorum in melius deflexit, nec tamen temperamenti egebat, cum æquabili auctoritate & gratia apud Principem viguerit.* 6. Annal.

* 4. *Annal.*

I ſhall only annex to this, what may in general ſerve as a Character of an able and uſeful Miniſter of State, faintly drawn from a great Original.

The Method of attaining to be a Miniſter of State.

Whoever deſigns to ſerve his Prince and Country, in the Adminiſtration of Affairs, muſt have had a liberal Education, ſpent a great portion of his time in diligently peruſing Ancient and Modern Hiſtories, Memoires of great men, the Laws and Government of his own and Foreign Countries, and the beſt Treatiſes of Politicks, and then conſider the moſt judicious and accompliſhed Perſons; and amongſt them, ſuch principally, as in their ſeveral Stations have the Practical Part of Affairs committed to them, both in Courts of Judicature, the Exchequer, and Admiralty; and in theſe eſpecially note their dexterity for their Imployments, wherein their Eminencies appear, how their Intereſts are interwoven, or independent; what their diſpoſitions and inclinations are, eſpecially in their obedience to the Government, uſefulneſs to it; their Treatableneſs, Avarice, Pride, Ambitious or Factious Propenſities; as well prying into the Vices they conceal, as the laudable Qualities they make themſelves conſpicuous by; diſtinguiſhing betwixt the natural and conſtrained tempers of every one.

If ſuch an one be not *Conſiliarius natus*, he ought to get himſelf early choſen a Member of the Houſe of Commons, and then diligently read all ſuch Books as treat of that Honourable Houſe, peruſe the Journals, note well and weigh, not only what he finds there, but alſo all the Speeches of the leading men, the force of their Arguments, and the tendencies of them: Mark well who are forwardeſt to ſupply the Government, whoſe Talent lies in contriving wholeſom Laws for the benefit of the Subject, who are the beſt Orators, who the ſubtileſt or ſolideſt, who affect Popularity, who are ſuggeſting ſuſpicions of the increaſe of the Kings Power, who the greateſt informers of Grievances, who cut the Thred eveneſt betwixt the Royal Prerogative and the Subjects Liberties; in all theſe well pondering the grounds upon which every one bottom their Arguments, contenting himſelf to be an Auditor and Regiſter for ſome while; in his Votes following the wiſeſt and leaſt byaſſed by private Intereſt.

During the time he is under the Diſcipline of this Noble School, he muſt fill up the intervals of his vacant hours, either in peruſing ſuch learned Authors as treat of the Subjects have been debated in the Houſe, or in converſation with the eminenteſt experienced Members, or with ſuch of the Court as he may be beſt informed from.

During all which time, he muſt intermingle the Study of the Laws of thoſe Foreign Countries his Prince hath Correſpondence with, and obtain true Characters of their Miniſters of State, their regulation of Trade, their Taxes and Gabels, their Military Force, the diſpoſedneſs of any Parties to Faction; and conſider wherein his own Prince, or a Foreigner hath better

ter Laws for the good Government of the Subjects, and for the preſerving the Crown in Splendor and Power.

A Perſon thus qualified and fitted for his Maſters Service, and the publick good of his Country, cannot long want an opportunity of being noted; and in peacable times, ſome Miniſters of State will be deſirous to obtain his aſſiſtance, and will be ready to befriend him for their own advantages, to alleviate their own burthens, and his Prince will be deſirous to be ſerved by a Perſon of ſuch a Fund.

If the times be turbulent and factious, it is not amiſs for ſuch a Perſon (during his Noviceſhip) to mingle himſelf with the popular, and Male-content Nobility; whereby he may know the bottom of their deſigns, and the plauſibleneſs of their Pretences, the ſtrength of their Reaſons, as well as of their party, and the tendencies of the diſtinct Intereſts, that may be united, in rendring the Government ingrateful to the People, though not in the methods of modelling or ſubverting it.

This, I muſt confeſs, is a dangerous point, and requires one that hath an Heart and Brain all Amulet againſt the infection of Diſloyalty, and is dexterous enough to cajole ſuch a Party; which he may the eaſilier do, by appearing only as a *raſa Tabula*, and deſirous of following others conduct, and a well wiſher to his Countrey; and then he ſhall be ſure not to miſs a ſerious courtſhip from that party.

How then to extricate himſelf from thoſe Thickets, Brambles, Coverts, or Earths, (wherein he hath entred to unkennel the Foxes) will be a great Maſter-piece, and requires no common agility, and deliberate forethought. One of the Houſes of Parliament is the fitteſt Theatre for him to unmask himſelf in, where he may at one great ſtep paſs over to the Loyal ſide: which will be done with more advantage, if he take ſome Critical time, when the ſignalizing his Loyalty will be more uſeful, as well as endearing to his Soveraign; and when Courage and Reſolution will beſt beſtead his Affairs.

Then he is to diſcover his Talent by demonſtratively manifeſting his true Zeal for, and juſtifying the Government in concurring with the faithfuleſt and ableſt Miniſters of State; or putting himſelf in the Van, and without Affectation or Paſſion, with weighty Reaſons, bold and natural utterance, ſmartneſs of Judgment, and Learning, fully determine the point in debate; and as often as there is occaſion, re-inforce his Argument with freſh matter.

Here he is to ſet up his reſt, being reſolved, for his whole life, never to deſert the Intereſt, after he hath upon ſo good deliberation reſolved upon it.

This Action will ſoon be diſcovered to his Prince, of whoſe Privy-Council (if he were not before) we may ſuppoſe he will ſoon be admitted. Hither he muſt carry a reſolution, fixed and unalterable, to intend ſolely his Maſters Service, and the

benefit of his People, that nothing of the Rights of the Crown be diminiſhed, or of the Liberties of the People be invaded. Here no double or ſiniſter dealing muſt enter his thoughts, he muſt be the ſame in his Prince's Cabinet, as at the Council-Board; he muſt uſe a true and dutiful diligence above his fellows, in attending his Prince's Perſon, and his Councils; muſt be free from unlawful Ambition, Bribery, and By-Ends; all over Oyled, that none may faſten a gripe upon him; be free, debonaire and affable to all he converſeth with; but withal, wholly reſerved as to the diſcovery of his Maſters Deſigns: Ready to prefer none but ſuch as may be truely ſerviceable to their King and Country; culling out, and recommending to his Imployment, only Sober, Diſcreet and Uſeful Perſons, in their ſeveral Capacities, and never ſupporting or countenancing any that once falſify expectation.

By the practiſing of all the reſpective qualifications I have (according to my poor Ability) ſet down in this Chapter, and that of the Privy-Council, and thoſe more excellent Methods and Rules his own great Wiſdom will ſuggeſt, he ſhall attain to a great truſt with his Maſter, and a great reſpect and veneration from all the Wiſe and Sober, and ſhall tranſmit a noble Example, and durable Pattern to Poſterity.

If it ſo fall out, that ſuch a Miniſter of State, cannot in ſome particular Affair conform his Judgment to that of his Collegues, or the Reſolutions of his Prince: It will be glorious in him, (after the laying open, with all modeſty and ſtrength of Reaſon, the grounds of his Opinion) to ſubmit quietly to his Prince's Pleaſure, with that reſignedneſs a Servant doth to a great Maſter, and he will be ſure to reap the benefit of it: For if his Prince, in the Sequel, find his Counſel was ſound, and not ill timed, he will imploy him in greater matters, and with more confidence than before; and if ſuch a Miniſter of State find that he hath been too partial, or byaſſed in his Opinion, he will ſoon find his own errour, and be leſs apt for the future to commit the like.

However, he is, and ever will be, a true Servant to his Prince, and a good Miniſter of State, who, *ex animo*, and with all poſſible ſincerity, can take as much pleaſure in obeying his Soveraigns Will, when he is laid aſide, as he did in ſerving of him ſo long as he was imployed by him:

Virgil, lib. 6. v. 883. *Tu Marcellus eras.*——

CHAP.

CHAP. XXXII.

Of the Kings Soveraignity in appointing Magiſtrates.

IF it were poſſible, ſaith (*a*) *Libanius*, that Princes in their own Bodies could be every where, there would be no need of Magiſtrates to be ſent into the Provinces: they themſelves being able to adminiſter Juſtice unto all, as the Sun is ſufficient to give light unto them: but ſeeing that cannot be (no more than they can fight all their Battels with their own Hands and Swords) therefore they muſt execute their Authority by others, and determine Juſtice, and cauſes of right and wrong, not by their own Tongue and underſtanding, but by the Sentence of others; ſo (as the (*b*) Philoſopher obſerves) making to themſelves many Eyes and Ears, Hands and Feet.

(a) *In Orat.* The neceſſity of Magiſtrates, to ſupply the Prince's Unubiquitarineſs.

(b) *Polit. lib.* 3. *c.* 16. Ὀφθαλμὸς πολλὸς ὁ μόναρχος ποιῆσιν αὐτῷ καὶ ὦτα καὶ χεῖρας καὶ πόδας.

It is incumbent upon the Prince in his ſafe keeping of his Empire (ſaith the (*c*) Orator) that he do not exhibit himſelf only, but all the Miniſters likewiſe of his power to be uſeful to the Publick; and, as *Plutarch* (*d*) adds, to place every one according to his capacity in his ſeveral imployment.

(c) *Cicero ad Fratrem.*
(d) *Præcept. Polit.*

For one (*e*) man though he have never ſuch alacrity in body and mind, cannot be ſufficient to undergo the greatneſs, and multitude of buſineſs which every day do flow upon the neck of another, unleſs they chuſe co-adjutors, out of the beſt men of known Wiſdom, Courage, Prudence, and Piety, who not only are free from Pride (the frequent concomitant of Power) but are abhorrers of it, as an hateful, and exceeding great evil. For ſuch men are moſt fit helpers and aſſiſtants to good and worthy Princes.

(e) *Philo de Creatione Principis.*

Therefore (*f*) *Bodin*, *Arniſæus* (*g*), and other Digeſters of Politicks, make it the third right of Majeſty to appoint and conſtitute Magiſtrates, who having their Authority flowing from the Prince as the fountain, derive from him all their Power of command. So (*h*) *Mecænas* adviſeth *Auguſtus*, *ut ſolus ſine Plebe, Populo, ac Senatu, Magiſtratus crearet*, that he alone, without the People and Senate create Magiſtrates: and *Zonaras* rightly affirms, that *creatio Magiſtratuum maxima pars eſt muneris Imperatoris*, the creation of Magiſtrates is the greateſt part of the Office of an Emperor. The Soveraign poſſeſſing his proper Power without a Superiour; (*i*) the Magiſtrates are Inſtruments, by which the Soveraign executes his Commands: for it is reaſon he alone have the power of appointing them, who hath the right (*k*) to redreſs the unjuſt Actions of the Magiſtrates, and to make void whatſoever ought not to have been done by them. (*l*) Hence it is, a Prince is to be very ſolicitous in the choice of Magiſtrates; for it is better for a Commonwealth, and almoſt ſafer, when a Prince is evil, than when the Prince's Miniſters are ſo: Therefore in the choice of them, the *indoles*, aptneſs

(f) *Lib.* 1. *c.* 10.
(g) *Pag.* 27. All Magiſtracy derived from the Sovereign.
(h) *Dio.*
(i) *Arniſæus, cap.* 11. *p.* 267.
(k) *Intercidere Magiſtratuum iniquitatem, infectumque reddere quicquid fieri non oportuerit.* Plin. Panægyr.
(l) *Lampridius in Alexandro. Meliorem eſſe Rempublicam & prope tutiorem, in qua Princeps malus ſit, ea in qua mali Principis Miniſtri.*

(m) Ἕκαστον ἐκάστῃ χρείᾳ, κατὰ τὸ οἰκεῖον προσαρμόττειν. *Plut. Polit. Præcept.* * *Propertius, lib* 3. The uſe of various Magiſtrates for various Employments.

aptneſs and ability of the perſons for their reſpective Offices are principally to be regarded; for (m) *omnia non pariter rerum ſunt omnibus apta.* Some are fit for (n) Military, and others for Civil commands; ſome for the Conſulting, Contriving part, others for the Executive; ſome becauſe there is uſe of their Popularity, others of their Prudence, others of their Juſtice; ſome to conciliate the Subjects dutifulneſs to their Prince, others to repreſent the Prince gracious to the People; ſome for the care of the Prince's Revenue, that he never want a Fund againſt all contingencies; others to ſee the diſpending of it for the Princes honour, and his own and the Peoples benefit. So that in (o) whomſoever any, or eſpecially all Vertues, are conſpicuous, much is to be attributed to him, and a Prince's Eye ſhould ſoon diſcover him to imploy him according to his Talent.

(n) Ὁ μὲν πρὸς πολιτείαν, ὁ δ' πρὸς πόλεμον εὐρυέστερος. *Plut. Polit. Præcept.*

(o) *In cujuſcunque animo virtus inſit, ei plurimum eſſe tribuendum.* Velleius, lib. 2.

Some Magiſtrates are abſolutely neceſſary for the Adminiſtration of the Government, without whom there cannot be that εὐκοσμία, as the Philoſopher calls it: ſuch are Lord Chancellors, Lord Treaſurers, Lord Lieutenants, Judges, Sheriffs, *&c.* others for the more ſplendid part of the Government, which are Officers of the Court rather than Magiſtrates, as Maſter of the Horſe, Grooms of the Stole, Bed-chamber and Privy-Chamber Gentlemen, Maſter of Ceremonies, Kings of Armes, *&c.*

(p) *Abſque neceſſariis Magiſtratibus Civitas ne conſiſtere quidem poteſt; abſque iis qui ad ornatum & pulchritudinem pertinent, præclare adminiſtrari non poteſt.* 6. Polit. c. 8.

Therefore the Philoſopher (p) rightly obſerves, That without neceſſary Magiſtrates a City cannot ſubſiſt; and without thoſe who are for Ornament and Beauty, the City cannot be adminiſtred honourably.

Young Nobility and Gentry to be ſo educated, as they may be fitted for Magiſtracy.

It is of excellent uſe to the Publick, as well as advantagious to themſelves, that the young Nobility and Gentry be bred up in Learning, Military Diſcipline, and all other ways that might accompliſh them for the ſervice of their Prince and Country: for where a Prince can be ſerved by the Nobility and ancient Gentry, it much facilitates the execution of their truſts; but in ſome caſes it may be requiſite to imploy thoſe of great Wiſdom, Judgment and Diligence (the Endowments of noble Minds) though not of ſo noble Extract. So (q) *Mecænas* adviſed *Auguſtus* that he ſhould chuſe the *præfectus prætorio*, out of the Horſemen, leſt if he were one of the Nobility he might attempt ſomething againſt the Prince: and ſo it is noted in (r) *Tacitus*, That the Province was given to *Sabinus*, not for any excellency, but that he was fit and not above the imployment. But this caution is unneceſſary where Kingdoms are hereditary, and depend not upon the approbation of Soldiery or Senate.

(q) 6. *Annal.*

(r) *Quod par negotiis neque ſupra erat.*

Princes not to give too great Powers to any.

Above all things Princes ſhould take care that they commit not any of their Royal Prerogatives to the Magiſtrates, or their Curators: 'Tis not ſafe for a Prince to intruſt any of theſe in a Subjects hands; for it is by many Hiſtories apparent, that when by reaſon of a Prince's Captivity, Minority, his proſecuting ſome War out of his Country (whereby a Kingdom cannot be

be governed without a Viceroy or Protector, with the whole Authority of a Prince) the ſweetneſs of this Power hath tempted them to uſurp or do ill Offices to their Prince or People. (s) Hence the Philoſopher adviſeth not to make ſuch great, who in Wit and Manners are bold and daring.

(s) Ἐὰν ὃ ἄρχων μικρὰ δύνηται ποιῆσαι μέγαν, μήτοι τί γε ἦθος δεσπότην. *Polit. lib.* 5. *c.* 11.

Great Miniſters not to be long continued in the ſame Station.

Therefore it is not ſafe for Princes to keep Viceroys long in their imployments, eſpecially if there be any danger of their Ambitious aimes to get the Soveraignty into their own hands; or that they will not be obſervant of the due Execution of the Laws, or for private ends will ſuppreſs the Nobility, or oppreſs the People; by their Intereſt pervert the courſe of Juſtice, or introduce new Laws, by ſurprizing the Soveraign in gaining his conſent. In all ſuch caſes the rule of the (t) Philoſopher is moſt true, They that for a ſhort time obtain the Magiſtracy, cannot ſo ſoon hurt, as they which enjoy it long; as he inſtanceth in *Demagogues* in Popular Government, and the *Dynaſtæ* in *Oligarchies*, which by that means became Tyrants.

(t) *Qui parvo tempore Magiſtratui præſunt, non tam facile nocere poſſunt quam qui longo.*

Julius Cæſar (u) and *Auguſtus* made all their Magiſtrates annually; whereby they gratified all the eminent men of the Commonwealth by rotation: but (w) *Tiberius* did otherwiſe, giving this reaſon for it, That Horſe-leeches having ſucked much blood are at quiet, and ſo the biting of freſh men are moſt ſharp. Some think, ſaith *Tacitus*, he did it only to ſeclude others from injoying of them, and to prevent his yearly trouble in chuſing, which as it would oblige the Elected, ſo would diſoblige the Candidates; but moſt aſcribe it to the ſubtilty of his Nature, *quod nec* (x) *eminentes virtutes ſectabatur, & rurſum vitia oderit; ab optimis periculum ſibi, à peſſimis dedecus publicum metuebat*; He did not make great ſearch, or take much care to find men of the moſt eminent Vertues, and yet he hated the Vitious; fearing from the beſt danger to himſelf, and from the worſt diſgrace to the Commonweal.

(u) *Clapmarius de Arcanis Imperii, lib.* 2. *c.* 18.

(w) *Alii tædio novæ curæ, ſemel placita pro æternis ſervaviſſe, quidam invidia, ne plures fruerentur; ſunt qui exiſtiment, ut callidum ejus ingenium, ita anxium judicium.*

(x) *Tacitus* 1. *Annal. cap. ult.*

In our conſtitution of Government, a moſt excellent temper is obſerved, where by the Princes Power is reſerved to change the prime Miniſters of State and Judicature at his pleaſure; which obligeth them to great care to act juſtly in their Places, and prevents Sedition, where any other had the Power of Electing: for it is the Power of chuſing in any other than the Soveraign, that is the only cauſe of Faction; not what the (y) Philoſopher notes againſt *Socrates*, That the ſame continually being Magiſtrates, is the cauſe of Sedition, by reaſon of the Envy of the rejected Candidates, and alſo among Spirited and Martial People that expect thoſe imployments.

The Sovereign's Power to change Magiſtrates.

(y) Τοῦτο δὲ στάσεως ἄτοπον γίνεσθαι, καὶ ὅτι τοῖς μηδὲν ἀξίωμα κεκτημένοις, ἥπτυγε δὲ καὶ τοὺς θυμοειδέσι καὶ πολεμικοῖς ἀνδράσιν. 2. *Polit. c.* 5.

The Kings of *England* have undoubtedly the ſole Power of creating, and appointing Magiſtrates, and Officers of greateſt Authority. So (z) the grave Author of the Commonwealth of *England* affirms, That in the appointing all the great Officers and Miniſters of the Realm, whether Spiritual, or

See more of this in the next Chapter.

(z) *Smith de Repub. Angliæ, lib.* 2.

or Temporal, the higheſt are immediately in the Kings Power to nominate, and the inferiour by Authority derived from him.

So the Kings of *England* appoint the High Commiſſioner, and all other the great Miniſters and Officers in *Scotland*; the Lord Lieutenant, Lord Juſtices, and other great Miniſters and Officers in *Ireland*, and by Letters Patents appoint a *Prorex*, *locum tenens*, or Guardian of the Realm in their abſence, before whom even Parliaments have been held: but it were endleſs to deſcend to the particular imployments of Magiſtrates under the Soveraign. Therefore I ſhall only note what the (*a*) Chancellor in the Queens name ſaid to Sir *Thomas Gargrave*, choſen Speaker of the Commons Houſe, That to the head of every body Politick, belongeth immediately or mediately the aſſignment, and admitting of every Member of the Body to his Miniſtry, and Duty; the contrary whereof were monſtrous in Nature and Reaſon.

(*a*) MS. Speech, 1 *Eliz. penes Rad. Thoreſly de Leedes, Gen.*

The neceſſary Care of a Prince in chuſing Magiſtrates.

It is both a great glory and happineſs to a Prince when he is ſerved by Magiſtrates of great probity: for the skill and watchfulneſs, as well as indulgent care of a Prince is thereby diſcovered, and revered in ſuch a choice; and the evil Complexion of the People is chargeable moſtly on the Magiſtrates. Therefore what the Chancellor (*b*) in a Speech in the *Star-Chamber*, by the Queens direction told the Juſtices, is applicable to all ſorts of Magiſtrates, That the not, or remiſs doing of Juſtice, muſt by the Prince be charged upon their ſhoulders, as the immediate Executors of the Law.

(*b*) MS. Speech, *Trin. Term.* 1557.

The qualifications of Magiſtrates may be the Subject of a Common place; I ſhall only hint ſome more neceſſary, referring the reſt to the ſucceeding Chapter. Firſt they ought to be Perſons undiſturbed with Paſſions; for as they are appointed to correct the Vitious, ſo they ſhould begin the Reformation at home. *Chilon*'s (*c*) Brother deſiring to know why he was not choſen at *Sparta* as well as *Chilon*, he anſwered that he knew how to bear an Injury, which his Brother did not; for in Publick imployments thoſe who are the *Cenſores morum*, and chaſtiſe the Infringers of the Laws, muſt expect Calumnies and evil Entreaties from the incorrigible and debauched: and ſuch muſt be reſolved to perform their duty without any other by-end of Revenge, Tyranny and Imperiouſneſs on the one hand; or haſty, raſh Cholerickneſs, Partiality or Corruptneſs on the other.

(*c*) *Laertius in vita Chilonis.*

Plato (*d*) adviſeth that the wealthieſt be choſen for the better ſupport of the Dignity; but withall, that they be ſuch as are exemplary in obeying the Laws. For none are more fit to ſerve their Prince and profit the Subjects, than ſuch as are obedient to the Laws, which when they make a rule of their own Actions, they will be ſure to exact it of others.

(*d*) *Lib.* 4. *de LL.*

It is a great diſparagement to a Prince, to chuſe men of vitious or uncommendable lives, or ſuch as have not worth and honour

honour to commend them. So the Princes of *Europe* think the *Grand Seignior* not ſo well ſerved by Slaves, nor was it ſo commendable in the *Roman* Emperors to make their Freemen of greater Power with them, in the managery of greater affairs, than Conſuls or Senators; which made (e) *Pliny* ſay, It was the principal ſign of a Prince not great, where the Freemen were great.

(e) *Præcipuum indicium non magni Principis, magni Liberti.* Panægyr.

The Prince cannot be preſumed to chuſe his Magiſtrates by his own knowledge of their abilities, and fitneſs for their ſeveral Imployments, but muſt truſt ſuch as are about him: therefore it becomes them well to know the qualifications of ſuch as are to bear Office; for the Rule of *Tacitus* (f) is to be obſerved, That it is better not to prefer to Offices and Adminiſtrations ſuch as will tranſgreſs, than to condemn them who have tranſgreſſed.

(f) *Melius officiis & adminiſtrationibus non peccaturos præficere, quam damnare cum peccarint.* Vita Agricolæ.

CHAP. XXXIII.

Of the Soveraigns appointing Judges, Courts of Juſtice, and other Officers.

HAving treated in the laſt Chapters of ſuch as have a general inſpection into, and (by the Soveraigns Election, and placing them) a power of adviſing, at leaſt, how the whole frame of Government is to be diſpoſed, as both Prince and People may be happy: I come now more particularly to the Miniſterial Officers of Juſtice, ſuch as are the Lord Chancellor or Keeper, Lord Treaſurer, the two Lord Chief Juſtices, and the reſt of the Judges, whether they be the Judges at *Weſtminſter*, or thoſe of Aſſiſes, *Oyer* and *Terminer*, to try Cauſes in their reſpective Circuits.

The Author's Apology.

I undertake this Task, *Lugduni tanquam Rhetor dicturus ad Aram*, or one that *procul profanus adorat*: The Subject being only fit to be handled by ſuch as have read and digeſted the whole Body of the Laws, and are eminent in the Profeſſion of them: whereas I muſt own my ſelf to have taſted only ſo much of that Ornamental and moſt uſeful Study, as may quicken a dull and languid Appetite, to praiſe, or rather admire it; than that I can hope to benefit the judicious Reader, by an imperfect Deſcription of their Calling and Office, who by the Sovereign are appointed to be the Oracles of the Law, and the Miniſters of his Juſtice, whoſe great Wiſdom and Knowledge all ought to reverence. But as they make ſo great a Figure in the Government, I could not omit them, though it be but to ſalute the Skirts, and hold up the Train of their Scarlet Robes.

SECT. 1.

King *Edward* the Elder's Law about Judges. *Gerefa.*

IN *Edward* the Elders Days, thoſe that gave Judgment under the King, had the name *Gereſa*, under which name, Aldermen, Earls, Preſidents, Prefects, Governours, *&c.* were comprehended. From whence with the *Germans*, the word *Grave* is uſed, for an Earl, Preſident, Judge, *&c.* and our Sheriff is from *Scyre gerev*, *Ræve*, or *Græve* of the Shire. The Charge in that Kings Laws, runs thus, (*a*) *Eadward the King wills, that all his Græves give ſo right Judgment as they can moſt Righteouſly, as it ſtands in their Judgment Book*, (that is, as we may ſuppoſe, in the written Laws) *fearing for no thing or cauſe, to declare or pronounce Right or Juſtice to the People. The which publiſhing of Juſtice, they ſhall appoint at certain times or Terms when they will perform it, and declare the ſame.* So that in this ſeems to be comprehended what is more at large in the Oath of a Judge in After-Ages.

(*a*) *Eadweard Cyning vyt thæm Gerefum eallum, that gede man ſwa ribte domas ſwa geribtoſte cunnon, & hit on thære dombec ſtande; ne wandigeth for nanum thingum folcribte to gerecanne, &c.*

The King is the Fountain of Juſtice.

We muſt principally conſider that the King is the Fountain and original of all Juſtice in his Kingdom; therefore *Bracton* (*b*) ſaith, That the King, and not another, ought to judge, if he alone were ſufficient to do it, being bound by his Oath to it; therefore the King ought to exerciſe the Power of the Law, as Gods Vicar. But if our Lord the King be not ſufficient to determine all Cauſes, that the Burthen may be lighter, divided among ſeveral Perſons, he ought to chuſe Men wiſe, and fearing God, and appoint them Juſticiaries.

(*b*) *Lib.* 3. *cap.* 9, 10. *Rex & non alius debet judicare, ſi ſolus ad id ſufficere poſſit, cum ad hoc per veritatem Sacramenti teneatur aſtrictus, ſicut Dei Vicarius & Miniſter in terra.* See *Britton, fol.* 1. *Coke*, 4. *Inſt. c.* 7.

Yet this ſurrogating of Judges in the Kings reſpective Courts, doth not diveſt the King of his Power; for as the ſame (*c*) *Bracton* ſaith, The King hath ordinary Juriſdiction, and all Laws are in his Hands, which cannot be ſo delegated, but that they remain with the King. From which, and other Authorities, Mr. *Lambard* ſaith, (*d*) That the Courts derive their Powers from the Crown, their original; and drawing by one and one (as it were ſo many Roſes) from the Garland of the Prince, leave nevertheleſs the Garland it ſelf undeſpoiled of the Sovereigns Vertue in the Adminiſtration of Juſtice.

(*c*) *Rex habet ordinariam Juriſdictionem, & omnia Jura manu ſua, quæ nec ita delegari poſſunt, quin ordinaria remaneant cum ipſo Rege.*
(*d*) *Archaion.*

Therefore ſaith Sir *Edward* (*e*) *Coke*, By the Common Law all Pleas were diſcontinued by the Death of the King; and Proceſs awarded, and not returned before his Death, was loſt--For by the Death of the King, not only the Juſtices of both the Benches, and the Barons of the Exchequer, but Sheriffs alſo, and Eſcheators, and all Commiſſions of *Oyer* and *Terminer*, Gaol-Delivery, and Juſtices of Peace, are determined by the Death of the Predeceſſor that made them.

(*e*) *Tit. Diſcontinue de Proces, part* 7. 30.

The Judges repreſent the King's Perſon.

Therefore the Statute of 25 *Ed.* 3. declares it to be Treaſon, if any man kill the Chancellor, Treaſurer, or the Kings Juſtices, of the one Bench or the other, Juſtices in Eyre or Aſſiſe, or any other Juſtices aſſigned to hear and determine, being in their places, doing their Offices. The (*f*) reaſon whereof is aſ-

(*f*) *Id.* 3. *Inſtit. p.* 18. & 140.

ſigned,

ſigned, becauſe all theſe repreſent the King's Royal Perſon, in his own Courts, by his own Commiſſion under the Great Seal, in the very Execution of the Kings Royal Office, *viz.* Adminiſtration of publick Juſtice to his People.

As therefore the King at his Coronation, (*g*) taketh an Oath to make to be done, in all his Judgments, equal and right Juſtice, and Diſcretion in Mercy and Truth, according to his Power: So he lays the Burthen thereof upon the Judges, according to that of *E.* 3. for the Pleaſure of God, and quietneſs of our Subjects, as to ſave our Conſcience, and keep our Oath, by the aſſent of our great Men, and other of our Council, we have commanded our Juſtices, that they ſhall from henceforth do even Law, and Execution of right to all our Subjects, Rich and Poor, without having regard to any Perſon, *&c.* Therefore before this in (*h*) *Magna Charta* we find, that the King will ſell, deny or defer Juſtice to none.

(*g*) *Facies fieri in omnibus Juſtitiis tuis æquam & rectam Juſtitiam, & diſcretionem in miſericordia & veritate, ſecundum vires tuas.*

(*h*) *Nulli vendemus, nulli negabimus aut differemus Juſtitiam vel Rectum.* c. 29.

Yet from hence it doth not follow, that if in the opinion of ſome, the King doth not do Juſtice, that therefore any Subject ſhould conclude, as the Maſter of the Hoſpitallers of *Jeruſalem* in *England*, at *Clerkenwell*, *Anno* 1252. 37 *H.* 3. did. The Story is thus told by (*i*) *Matthew Paris*:

(*i*) *Hiſt. p.* 826,827. *Edit. prioris.*

The King loſeth not his Authority, tho' he do not Juſtice.

The Maſter waiting a time, when he might diſcourſe with the King, he complained of ſome Injuries done him, and ſhewed the King ſome Charters of Protection, of himſelf and his Anceſtors. The King anſwered with an Oath, and in Wrath; *You Prelates and Religious, eſpecially Templars and Hoſpitallers, have ſo many Liberties and Charters, that they make you proud,* &c. *Therefore they ought prudently to be revoked, which imprudently have been granted to you; for even the Pope oftentimes revokes his Grants, with a* non obſtante: and the King told him, ſo he would do. To all which the (*k*) Maſter (ſaith *Matt. Paris*) anſwered chearfully, and with a lifted up Countenance, What is this you ſay, my Lord the King? far be it from you to ſpeak ſo abſurd a thing. As long as you obſerve Juſtice you may be a King; and as ſoon as ever you break this, you ceaſe to be a King. Thus he would make Dominion founded in Juſtice, as others in Grace. But I need not add many Authorities upon this Head; for by the univerſal Suffrage of the profound Lawyers, the Kings of *England* ſolely nominate, create, and (*l*) appoint all the Judges of the great Courts at *Weſtminſter*, and may remove them at their Pleaſure, and alone make (*m*) and appoint Juſtices of *Oyer* and *Terminer*, of Gaol-delivery, Juſtices of the Peace, Sheriffs, and the like Officers, and (*n*) remove them when they ſee Cauſe: and the (*o*) Prerogative of making Judges cannot be given or claimed by a Subject.

(*k*) *Cui Magiſter Hoſpitalis reſpondit alacriter, vultu elevato, Quid eſt quod dicis, Domine Rex? Abſit ut in ore tuo recitetur hoc verbum illepidum & abſurdum. Quamdiu Juſtitiam obſervas, Rex eſſe poteris: & quam cito hanc infregeris, Rex eſſe deſines.*

(*l*) *Dyer, fol.* 56.

(*m*) *Davis.* 45.

(*n*) *Coke* 4. *Inſt. n.* 4. 14. 114. 117.

(*o*) *Bulſtrod.* 3. 296. 1 *H.* 7. *c.* 25.

The King hath alſo Power to name, create, make, (*p*) and remove the great Officers Eccleſiaſtical and Civil, by Sea and Land, as Archbiſhops, Biſhops, (by way I ſuppoſe of *Conge deſlier*, and Tranſlation) Lord Chancellor or Keeper, Lord Treaſurer, Lord Preſident, Lord Privy-Seal, Lord High Steward, Lord

(*p*) *Sheppard's* Grand Abridgment, *part* 3. *p.* 53.

The King's placing and diſplacing all Great Officers.

Admiral, Lord High Conſtable, Earl Marſhal, Lord Chamberlain, Privy Counſellors, the Marſhal or Steward of the Kings Houſe, and the reſt of the Officers of his Houſhold, Maſter of the Horſe, Officers of the Mint, of the Caſtles, Port-Towns, and Shipping, Lord Lieutenants, and many more too tedious to be named. So that either mediately or immediately, all Officers are by the Kings appointment; which is not only a manifeſt badge, but a neceſſary appurtenance of the Soveraignty.

SECT. 2.

The Court of High-Steward.

The Court of the High-Steward.

THE Kings Courts have been various, as that of the Privy-Council, called the Council-Board, of which I have ſpoke before. The Court of the High-Steward of *England*, intituled, *Placita Coronæ coram ---- Seneſchallo Angliæ*, diſuſed ſince the Reign of *Henry* the Fourth; and now a Lord High-Steward is only appointed, *pro hac vice*, with limitations for the Tryals of ſome Peers of the Kingdom upon Inditement. His Power anciently was (*q*) *Supervidere & regulare ſub Rege, & immediate poſt Regem, totum Regnum Angliæ & omnes Miniſtros Legum, infra idem Regnum, temporibus Pacis, & Guerrarum.* The next Court which is now totally ſuppreſſed, was the Honourable Court of Star-Chamber, of ancient time ſtiled *Coram Rege & Concilio ſuo, & coram Rege & Concilio ſuo in Camera ſtellata*, of which I ſhall have occaſion to write ſomething in the Chapter below.

(q) *Coke* 4 *Inſt. c.* 4.

The Star-chamber Court.

SECT. 3.

The Court of King's-Bench.

The King's-Bench.

AS to the great and ſtanding Courts, the firſt of them that is mentioned in Ancient Writers, is that of the Kings Bench, *coram Rege*. This, (*r*) *Bracton* ſaith, was the Kings proper Court, called the Kings Hall, and had for Judges in it Chief-Juſtices, which determined the Kings proper Cauſes, *&c.* The ſame (*s*) Author ſpeaking of the Juſtices of this Court, ſaith, That ſome of them were Capital, General, perpetual, and the greater ſitting by the Kings ſide, which were to correct the injuries and errors of all others.

Fleta in deſcribing this Court, ſaith My Lord *Coke*, gives this account, That the King in this Court hath his Juſticiaries, as well Knights as Clergy-men, as the Kings Lieutenants in *England* (as the Lords Juſtices were ſometimes I ſuppoſe in *Ireland*) before (*t*) whom, and no where elſe, unleſs before the King himſelf, and his Council or ſpecial Commiſſioners, falſe Judgments and Errors of Juſtices are reverſed and corrected: and there are determined Breeves of Appeals, and other Breeves

(r) *Rex illarum Curiarum habet unam propriam ſicut Aulam Regiam, & Juſticiarios Capitales qui proprias Cauſas Regias terminant.*

(s) *Juſticiariorum quidam ſunt Capitales, generales, perpetui, & majores a latere Regis reſidentes, qui omnium aliorum corrigere tenentur injurias & errores.* Lib. 3. c. 7. fol. 108 b.

(t) *Coram quibus & non alibi niſi coram ſemetipſo, & Concilio ſuo, vel Auditoribus ſpecialibus, falſa Judicia & Errores Juſticiariorum revertuntur & corriguntur.*

Breeves upon Criminal Actions, and Injuries againſt the Peace of the King. And *Bracton* ſaith, That in Criminal Matters, if they touched the King's Perſon, as Treaſon, they were tried *coram Rege*; if concerning private matters, then before the Juſtices only.

By many Records it appears, that the King ſometimes ſate in this Court, and that ſometimes the King ordered it to follow his Court, as particularly in 28 *E.* 1. (*u*) it was eſtabliſhed in the Statute of *Articuli ſuper Chartas*.

The Kings of *England* uſed to ſit in this Court.

(*u*) *Cap.* 5.

Robert de Bruis was the firſt *Capitalis Juſticiarius ad placita coram Rege*, 8 *March* (*w*) 52 *H.* 3. the Title of *Juſticiarius Angliæ* (of whoſe great Power the learned (*x*) *Spelman* and (*y*) Mr. *White* have given an account) having an end in *Phillip Baſſet*, who was advanced to that place 45 *H.* 3.---- Who deſires further ſatisfaction, may conſult Mr. *Crompton*'s *Juriſdiction des Courts*, *c.* 4. Sir *Ed. Coke*, Sir *William Dugdale*, Mr. *Prynne*, and the Authors they cite, who are many and learned, and do at large treat of its Juriſdiction and the Practice in it, which are foreign to my Deſign.

(*w*) *Pat.* 52 *H.* 3. *m.* 24.

(*x*) *Gloſſary.*

(*y*) Sacred Laws.

Sir *Henry Spelman* is worth conſulting about the Office of the Chief-Juſtice of *England*.

SECT. 4.

The Court of Common-Pleas.

The Common-Pleas.

THis Court of Common-Pleas appears to be as antient as *Henry* the Firſt's time; for in his Charter to the (*z*) Abbat of *B.* he grants Connuſance of all Pleas; ſo that neither the Juſtices of the one Bench, or of the other, or Juſtices of Aſſize ſhould meddle. *Bracton* (*a*) ſaith, This Court had Cognizance of all Pleas, of which Authority is given them, without warrant, they neither having Juriſdiction, or Coercion. Therefore Sir *Edward Coke* ſaith, That regularly this Court cannot hold any Common-Plea in any Action, real, perſonal, or mixt, but by Writ out of Chancery, returnable in this Court.

(*z*) *Coke*'s Reports, *part* 8.

(*a*) *Cognoſcunt de omnibus Placitis de quibus Authoritatem habent cognoſcendi, & ſine Warranto Juriſdictionem non habent nec Coercionem.* Lib. 3. c. 10. fol. 105 b.

Thoſe that treat of this Court, agree, That it was for hearing and determining all Controverſies in matters Civil, betwixt Party and Party; called the Common-Pleas, as contradiſtinct from Pleas of the Crown, and was anciently kept in the Kings own Palace.

This Court proper for Pleas betwixt Party and Party.

In *Magna Charta* it is granted, That the Common-Pleas ſhall not follow the Kings Court, but ſhall be held in a certain place. The Exchequer having been the place where theſe Cauſes were heard, till (*b*) 28 *E.* 1. that by Statute it was provided, that no Common-Plea ſhall from henceforth be held in the Exchequer, contrary to the form of the Great Charter.

Not to follow the King's Court.

(*b*) *Articuli ſuper Chartas, cap.* 4.

The firſt, who had the Appellation of *Capitalis Juſticiarius* in this Court, according to Sir *William Dugdale*, was *Gilbert de Preſton*, who by that Title had his Livery of Robes, (*c*) 1 *E.* 1.

(*c*) *Liberat.* 1 *E.* 1. *m.* 4.

The

(*d*) See Sir *William Dugdale*'s *Origines Furidiciales*, *p.* 39 *b.* The number of the Juſtices varied.

The number of the Juſtices (*d*) 3 *E.* 2. were Six, 14 *E.*3. they were Nine; the latter end of *Henry* the Fourth, and all the Reign of *Henry* the Seventh they were but Four. Thoſe that would be ſatisfied about the Juriſdiction of this Court, may have recourſe to Mr. *Richard Crompton*'s Juriſdiction of Courts *c.* 7. *fol.* 91. the Year-Book quoted in *Aſh* his *Promptuary*, Sir *Henry Spelman*'s Gloſſary *tit. Bancus, & Capitalis Juſticiar. de Banco Communi*, *p.* 417. Sir *W. Dugdale*'s *Origines Juridiciales*, *Prynne*'s Animadverſion, *p.* 52. and many other good Authors cited by them.

SECT. 5.

Court of Chancery.

Court of Chancery.

THE Court of Chancery in ſome Writers is placed the firſt, in others as I have placed it. Although it is true what Sir *Edward* (*e*) *Coke* ſaith, That Kings had their Chancellors in the *Saxon* times (indeed he adds the Britiſh alſo, of which little can be known;) yet I dare not avouch with him, that the Court of Chancery was then, as now, the only Court out of which Original Writs do iſſue: it is true, that to the Charter of King (*f*) *Edward the Confeſſor* made to the Abbat of *Weſtminſter*, amongſt the Witneſſes it is ſaid, *Ego Swardus* (*g*) *Notarius ad vicem Reynbaldi Regiæ dignitatis Cancellarii hanc cartam ſcripſi, & ſubſcripſi*: So (*h*) *Adulph* is accounted Chancellor to King *Edgar*, and *Turketil* to King *Edred*, and King *Edmund*, and *Wolſine* to King *Athelſtan*; and that the Chancellor had a Court, may be preſumed from what is found in the Book of *Ely* (writ as it is ſuppoſed about King *Stephen*'s time) that King *Æthelred* who Reigned about *Anno* 978. appointed, and granted, that the Ch. of *Ely*, then, and ever after in the Kings Court, ſhould have the dignity of the Chancery: which albeit, as Sir *Edward Coke* ſaith, it was void in Law, to grant the Chancellourſhip of *England* in Succeſſion; yet it proveth, that then there was a Court of Chancery. As to the firſt, it is apparent, that the Chancellor then had the power of compoſing the Charters; and before Seals were in uſe, might alſo ſubſcribe with the Sign of the Croſs, as other of the Kings Officers did; but this doth not prove what kind of Court he was made Judge of: for here the Notary in the Chancellors room ſigns laſt, and in the (*i*) Councils of Sir *Henry Spelman*'s Edition, I find *Adulph* ſtiled *Hereſordenſis* (*k*) *Eccleſiæ Cataſcapus*, ſigning laſt of the Abbats. As to the Book of *Ely*, I know not how to underſtand that the Church ſhould have any dignity of Chancellorſhip in the Kings Court; and if it be meant of the Biſhop of that See only, it might poſſibly be meant to be the principal Chirographer, or drawer of the Kings Charters. As to what is found in the Mirror, it is of no great validity, being writ according to the then cuſtom of the Age; wherein the

(*e*) Sir *Edw. Coke*'s Arguments for the Antiquity of the Chancery.

(*f*) *Spelman. Tom.* 1. *Concil. p.* 631.

(*g*) *Swyergarius* in *Spelman.*

(*h*) *Gloſſary, fol.* 106.

Anſwer. *Cancellarius qui vel Regum præcepta aut Acta Judicum ſcribit.* Spelm. Gloſſ. fol. 104.

(*i*) *Tom.* 1. *p.* 486.

(*k*) *Id. p.* 489.

See *Spelman. Gloſſar. p.* 106.

the Author ſaith, That Enrollments (*l*) of Pardons of the King, were in the Chancery in the time of King *Alfred*; Altho' *Mauricius Regis Cancellarius*, by that title ſubſcribes as witneſs to the Charter of King *William* the Conquerer, to the Abby of *Weſtminſter*; yet none of theſe prove, that ſuch a Court was in thoſe Ages conſtituted, as we now call the Chancery. For Sir *Henry Spelman* (*m*) proves the Chancery was no Court, but only the Shop (as he calls it) of the Kings Writs and Charters in old time, now conſiſting of three Parts, *ſc. è Collegio Scribarum Regiorum, è Foro Juris communis, & è Prætorio boni & æqui.*

(*l*) *Pur le Enrolments de Pardon de Roy in le Chancery en temps le Roy Alfred.*

(*m*) *Gloſſ. p.* 107 *a.*

Mr. *Lambard* (*n*) hath proved that till the Reign of King *Edward* the Firſt, we find nothing of the Chancellors hearing and determining of Civil cauſes: for till then the *Juſticiarius Angliæ* had the great Power, which being then reſtrained *ad placita coram Rege tenenda*, the King, together with the truſt and charge of the Great Seals, appointed him to repreſent his own Royal and extraordinary Preheminence of Juriſdiction in Civil Cauſes: and he gives this particular reaſon for his opinion, That *Britton*, a Learned Lawyer in *Edward* the Firſt's time, writing of all other Courts, from the higheſt Tribunal to a Court Baron, maketh no mention of this Chancery. Yet towards (*o*) the latter end of his Reign we find it enacted, That the Chancellor and Juſtices of the Bench ſhould follow the King (that is, remove with the Kings Court) ſo that he might have at all times near him ſome Sages of the Law, which were able to order all ſuch matters as ſhould come unto the Court at all times when need ſhould require.

(*n*) *Archaion, p.* 62, 63. Sir *William Dugdale's Origines Jurid. fol.* 36. *b.*

(*o*) 28 *E.* 1. *c.* 5. The Chancellor and Juſtices of the King's-Bench to follow the King.

Yet this Act did not give an abſolute Power to the Chancellor alone, of determining in ſuch Civil Cauſes; as may ſeem by that Law, which was made 20 *Ed.* 3. (*p*) where it appears the Treaſurer was joyned with him, to hear complaints againſt Sheriffs, Eſcheators, *&c.* ſomething like this about Purveyors, and Eſcheators, that they might not oppreſs, was enacted (*q*) 36 *Ed.* 3.

(*p*) *Cap.* 6.

(*q*) *Cap.* 3.

Nevertheleſs Mr. *Lambard* obſerves, that it doth not appear in the Reports of the Common Law, that there is any frequent mention of Cauſes uſually drawn before the Chancellor for help in Equity, till from the time of King *Henry* the Fourth; nor are there found any Bills and Decrees in Chancery before the 20 of *H.* 6. ſuch Cauſes as ſince that time were heard in that Court, having formerly been determined in the Lords Houſe of Parliament.

When Cauſes in Equity determined in Chancery.

So Sir *Edward Coke* ſaith, In the *Chancery* are two Courts; Firſt, the ordinary *coram Domino Rege in Cancellaria*, wherein the Lord Chancellor or Lord Keeper of the Great Seal proceeds according to the right line (*r*) of the Laws and Statutes of the Realm. Secondly, extraordinary according to the Rule of Equity, *Secundum æquum & bonum.*

(*r*) *Secundum Legem & Conſuetudinem Angliæ.*

But it is not my buſineſs to enter into particulars. The curious may conſult Sir *Edward* (*s*) *Coke*, Mr. *Richard Cromptom, cap.* 3.

(*s*) 4. *Inſtit. c.* 8.

Sir

Sir *Henry Spelman* 1. *gloſſar.* 1. *de Cancellario à pag.* 105. *ad pag.* 113. *Ryley's Appendix*, *Aſh's Repertory tit. Courts*, *Sect.* 2. *Roll's Abridgment*, *p.* 374. *to* 587. *Prynne's Animadverſions*, *p.* 48.

(t) *Cap.* 18. The Lord Keeper equal to Lord Chancellor.

Anno 5 *Eliz.* (*t*) it was Enacted that the Lord Keeper for the time being hath always had, uſed and executed, and ſo may for the future, the like place, Authority, Preheminence, Juriſdiction, Execution of Law, *&c.* as the Lord Chancellor of *England* for the time being, lawfully uſed.

(u) *Rot. Parl.* 10 *R.* 2. *col.* 8. The Oath of the Lord Chancellor.

The Oath of the Chancellor or Lord Keeper, is to be found (*u*) 10 *R.* 2. conſiſting of ſix Parts: Firſt, That well and truly he ſhall ſerve our Soveraign Lord the King and his People in the Office of Chancellor, or Lord Keeper. Secondly, That he ſhall do right to all manner of people, Poor and Rich, after the Laws and uſages of the Realm. Thirdly, That he ſhall truly counſel the King, and his Counſel he ſhall *layen*, *i. e.* hide or keep ſecret. Fourthly, That he ſhall not know, nor ſuffer the hurt, or diſheriting of the King, or that the Rights of the Crown be decreaſed by any means, as far as he may lett it. Fifthly, That if he may not lett it, he ſhall make it clearly and expreſly to be known to the King, with his true Advice and Counſel. Sixthly, That he ſhall do and purchaſe the Kings profit in all that he reaſonably may, as God help him, and by the Contents of this Book.

SECT. 6.

Of the Court of the Exchequer.

SIR *Edward Coke* ſaith, the Authority of this Court is of original Juriſdiction without any Commiſſion. *Bracton* mentioneth nothing of this Court, and *Fleta* giveth a very ſhort account, that the King hath his Court and his *Juſticiaries* reſiding at his Exchequer, but deſcends to no particulars of the Juriſdiction. But (*x*) *Britton* (who lived in *Edward* the Firſt's Reign, (and all along writes in the name of the King, as if his whole work had been the Kings) gives us an account of the Nature of this Court in ſeveral particulars, To hear and determine all Cauſes which touch the Kings Debts, his Fees, and the incident Cauſes, without which theſe cannot be tried: So of Purpreſtures, Rents, Farms, Cuſtoms, and generally of whatever appertained to the Revenue of the Crown, the Tenants and Receivers of it; ſo that the Court is divided into two Parts, *viz.* Judicial Accounts, called *Scaccarium Computorum*, and into the Receipt of the Exchequer.

(w) *Fol.* 2 *b.*

The Lord Treaſurer principal Officer of the Exchequer.

The principal Officer is the Lord Treaſurer of *England*, who formerly had this great Office, by delivery of the Golden Keys of the Treaſury, and hath the Office this day by delivery of a white Staff at the Kings Will and Pleaſure; his Oath is much-what the ſame as the Chancellors, differing principally in that clauſe, That the Kings Treaſure he ſhall truly keep and diſpend.

The

The other great Officers are the Treaſurer of the Exchequer, the Chancellor and Chief Baron and other Barons of the Exchequer; The reſt of the Officers are particularly reckoned in Sir (x) *Edward Coke.*

(x) 4. *Inſtit. fol.* 106, 107, 108.

The Oath of the Barons of the Exchequer is to be found in the Statutes (y) 20 *Ed.* 3. *cap.* 2. whereof the principal parts are, That he ſhall truly charge and diſcharge all manner of People, as well Poor as Rich, that for Highneſs, nor for Riches, nor for Hatred nor Eſtate of no manner of perſon or perſons, nor for any Deed, Gift, nor Promiſe of any perſon, the which is made to him, nor by Craft, nor by Ingen, he ſhall let the Kings Right, nor none other Perſons right he ſhall diſturb, let or reſpite, contrary to the Laws of the Land, nor the Kings Debts he ſhall put in reſpite, where that they may goodly be levied; that the Kings need he ſhall ſpeed above all others; that neither for gift, wages, nor good deed, he ſhall layne, diſturb nor let the profit, or reaſonable advantage of the King, in the advantage of any other perſon, or of himſelf; that he ſhall take of no perſon, for to do wrong or right, to delay or to deliver, or to delay the People that have to do before him, *&c.* where he may know any wrong or prejudice to be done to the King, he ſhall put, and do all his power, and diligence that to redreſs; and if he may not do it, that he tell it to the King, or to them of the Council, that may make relation to the King, if he may not come to him.

(y) The Oath of the Barons of the Exchequer.

Sir *Edward Coke* (z) hath commented on the Mirror, to explain all the Power and particular buſineſs of the Court, and further obſerveth that the Patent of the King to the Chief Baron, the reſt of the Barons, Atturney General, and Sollicitor, are not ſo long as the King pleaſeth, but *quam diu ſe bene geſſerint*, which is interpreted a place for life; and there is good reaſon, being too many changes would give too many an inſight into the Kings Revenue.

(z) 4. *Inſtit. p.* 103. & 110, 111.

There is a Manuſcript (a) of *Gervaſius Tilburienſis*, writ in the time of *Henry* the ſecond, which gives an account, how it came to be called the Exchequer, from a checked Covering of the Table, at which the Officers of the Court ſate; and ſaith, That it is lawful for none to infringe the Statutes of the Exchequer, or by any raſhneſs to reſiſt them; it having that common with the Court of the Lord the King, in which he in his proper perſon gives Judgment, that it is not lawful for any to contradict, either the Record or Sentence. By which it appears that this Court was diſtinct from the Kings Bench, where the King ſate in perſon, and that by the Inſtitution of *William* the Conqueror, not only the great Barons of this Realm as well Eccleſiaſtical as Secular, but alſo the Juſtice of *England*, as Preſident thereof, by his Office, were Members of this Court, and ſo continued to do long after, as the Judicious (b) Sir *William Dugdale* hath by Precedent ſhown: Mr. *Prynne* hath given us two Records (out of the Exchequer (c) 34 *H.*3. and *Riſhanger* 40 *H.*3.) that

(a) *Codex niger, c.* 1. —*Nulli licet ſtatutum Scaccarii infringere vel eis quavis temeritate reſiſtere* — *Habet enim hoc commune cum ipſa Dom. Regis Curia, in qua ipſe in propria perſona Jura decernit, quod nec Recordationi nec Sententiæ in eo latæ liceat alicui contradicere.*

(b) *Origines Juriſdic. fol.* 50.

(c) *Commun. Term. Mich.* 35 *H.*3. *Rot.* 2.

that that King in his proper perſon ſate, and gave judgments in the Court of Exchequer, and gave not only Rules to be obſerved about the Revenue, Sheriffs and Bailiffs, but alſo concerning puniſhing Blaſphemy, defending Pupils, Orphans and Widows, and how the *Magnates* deported themſelves to their Tenents: and if (*d*) they found them tranſgreſſing, that they correct them as they can; and if they cannot fully correct them, they ſhow the ſame tranſgreſſions to the King.

(*d*) *Inquirant qualiter Magnates ſe gerunt erga homines ſuos, ſi forte non poſſunt plenarie corrigere, tunc oſtendant eaſdem tranſgreſſiones Dom. Regi.*

He hath alſo given an account how, 54 *H.* 3. (*e*) the accounts of the Sheriffs into the Exchequer were to be digeſted, and in *Michaelmaſs*-Term, the ſame Year, how the Barons of the Exchequer were to adminiſter the new Oath to the Mayor Elect of the City of *London*: likewiſe in the ſame (*f*) Author there is a large refutation of Sir *Edward Coke*'s Opinion, that the Statute of *Rutland*, as he calls it, was a Statute made by the King, Lords, and Commons; where it is proved againſt Sir *Edward*, that it was made for the ordering of the Exchequer at *Rothelan* in *Wales*, by the King and his Council, and not at *Rutland*: but I ſhall not enter into ſuch Particulars.

(*e*) *Pat.* 54 *H.* 3. *m.* 22. *dorſo.* & *Incep.* 55. *Rot.* 3. *dorſo.*

(*f*) *Animadv. fol.* 55, 56.

There are ſeveral other Courts, which have peculiar Juriſdictions by the King's Grants, and Preſcription, as the Court of Requeſts, aboliſhed 17 *Car.* 1. The Court of Chivalry, Court of *Marſhalſea*, of the Admiralty, and that for redreſs of delays of Juſtice, which Sir *Edward Coke* and others have treated of at large, and fall not ſo neceſſarily for me to diſcourſe of: So I ſhall proceed to the Itinerant Juſtices, and of Aſſizes, and Gaol-delivery.

SECT. 7.

Of Itinerant Juſtices, and Juſtices of Aſſize, and Niſi Prius.

Itinerant Juſtices.

SOme Shadow of this we find in the time of the Conqueror, when *Geofrey*, Earl of *Conſtance*, and ſome other *Barones Regis*, did ſit at (*g*) *Kenteford*, to hear and determine the Claim touching the Rights and Liberties of the Church of *Ely*, at that time diſputed before them.

(*g*) *Regiſt. Eccleſiæ Elienſis, fol.* 24 *b.*

But the ſettlement of the Conſtitution of them, was not till 22 *H.* 2. *Anno* 1176. as *Roger Hoveden* (*h*) hath related, when the King held his Great Council at *Nottingham*, *& communi omnium Conſilio diviſit Regnum ſuum in* 6 *partes, per quarum ſingulas, Juſticiarios Itinerantes conſtituit:* and the Twenty fifth of his Reign, at his great Council at *Windſor*, (*i*) he divided *England* into four Parts, and over every Part he appointed Wiſemen to do Juſtice, and hear the Complaints of the People.

(*h*) *Annal. pars poſt. p.* 148, 149, 150.

(*i*) *Idem, p.* 590, 591. *Et unicuique partium præfecit viros ſapientes ad faciendam Juſtitiam & ad audiendum clamorem populi.*

The Form of the ſpecial Writ from the King to impower them to act, and of the Writ directed to the Sheriffs, to ſummon all ſuch Perſons as were concerned in this Service, to appear before the Juſtices, may be ſeen in Sir *William Dugdale*'s *Originis Juridiciales, fol.* 52. *a. b.* In which latter Writ (*k*) the Perſons ſummoned

(*k*) *Cl.* 3 *H.* 3. *m.* 13. *dorſo.*

ſummoned to appear, were Archbiſhops, Biſhops, Abbats, Earls, Barons, Knights, *& libere tenentes*, and in every Village four *Legales Homines*, *& Præpoſitum*, *& de quolibet Burgo*, 12 *Legales Burgenſes*.

Sir *Ed. Coke* (*l*) calls theſe Juſtices in *Eyre*, and ſaith, they had Juriſdiction in all Pleas of the Crown, and of all Actions real, perſonal, and mixt, and they rode from ſeven Years, to ſeven Years. Theſe Juſtices in *Eyre* continued no longer than till *Edward* the Third's time; for then as Mr. (*m*) *Selden* notes, Juſtices of Aſſizes came in their Places, though it is manifeſt that Juſtices of Aſſize were ſooner begun.

(*l*) 4. *Inſtit. p.* 184.

(*m*) Notes on *Hengham, p.* 143. Juſtices of Aſſize.

For (*n*) *Bracton* mentions theſe Juſtices of Aſſizes in his time in theſe words, *Sunt etiam Juſtitiarii conſtituti ad quaſdam Aſſiſas, duo, vel tres, vel plures, qui quidem perpetui non ſunt, quia expleto negotio Juriſdictionem amittunt.* The form of the Writ in (*o*) 9 *H.*3. is ſet down by Sir *William Dugdale*, in which the King conſtitutes his *Juſtitiarii* to take the Aſſizes of new diſſeiſing, and Delivery of the Gaol; and the Command to the Sheriff, is to cauſe (*p*) four legal Men, and the Provoſt out of every Village, and twelve lawful Men out of every Market-Town, and Borough, and all the Knights, and Free-Tenents, that is, all that held *in Capite*, to do what the Juſtices ſhould on the King's part appoint.

(*n*) *Lib.* 3. *c.* 10.

(*o*) *Cl.* 9 *H.*3. *m.*11. *dorſo.*

(*p*) *De qualibet Villa quatuor legales homines, & Præpoſitum & de quolibet Burgo, vel Villa mercanda duodecim legales homines, & omnes Milites & libere Tenentes, &c.*

In 21 *E.* 1. (*q*) another ſettlement was made; that eight diſcreet Juſtices ſhould be aſſigned to take Aſſizes, Jurats, and Certificates, throughout the whole Realm, *viz.* for the Counties of *York*, *Northumberland*, *Weſtmoreland*, *Cumberland*, *Lancaſter*, *Nottingham*, and *Derby*, two. In the Counties of *Lincoln*, *Leiceſter*, *Warwick*, *Stafford*, *Salop*, *Northampton*, *Rutland*, *Glouceſter*, *Hereford*, and *Worceſter*, other two. In the Counties of *Cornwall*, *Devon*, *Somerſet*, *Dorſet*, *Wiltſhire*, *Southamptom*, *Oxford*, *Berks*, *Suſſex*, and *Surrey* two. For the Counties of *Kent*, *Eſſex*, *Hertford*, *Norfolk*, *Suffolk*, *Cambridge*, *Huntingdon*, *Bedford*, and *Bucks* two: and that the Aſſizes, *&c.* of *Middleſex* ſhould be taken before the Juſtices of the Bench.

(*q*) *Placit. Parliam.* 21 *E.* 1. *num.* 12.

(*r*) *Bracton* ſpeaking of the Writ called *Aſſiza novæ diſſeiſinæ* ſaith, it was found out and contrived by much Vigilance, for the recovering of Poſſeſſions, by a ſummary or ſpeedy Conuſance, without great Solemnity of the Law, that the buſineſs might be compendiouſly determined. For before at Common-Law, Aſſizes were not taken, but either in the Bank, or before Juſtices in *Eyre*, which was a great delay to the Plaintiff, and a great moleſtation, and vexation of the Recognitors of the Aſſize; therefore in *Magna Charta*, the Aſſizes are appointed to be taken in the reſpective Counties, and the Patents to Juſtices of Aſſize run thus, (*s*) *Sciatis quod conſtituimus vos Juſticiarios noſtros, una cum hiis quos vobis aſſociaverimus, ad omnes Aſſiſas*, &c. *in Com.* &c. *arainandas capiendas*, &c. *facturi inde quod ad Juſtitiam pertinet, ſecundum legem & Conſuetudinem Regni noſtri Angliæ. Salvis nobis amerciamentis inde provenientibus.*

(*r*) *Multis vigiliis excogitata & inventa fuit recuperandæ poſſeſſionis gratia, ut per ſummariam cognitionem abſque magna Juris ſolennitate, quaſi per compendium negotium terminetur.* Lib. 4. fol. 164 b.

(*s*) See the *Patent Clauſe* and *Fine-Rolls* from King *John* to *Edw.* 4.

Justices of *Nisi Prius.*

(t) *Ad exonerationem Juratorum, & ad celerem justitiam in ea parte exhibendum.* Stat. de Finibus, 27 E. 1. c. 4.

The Justices of *Nisi Prius* (t) were first instituted by the Statute of *Westm.* 2. and their Authority is annexed to the Justices of Assize. These Justices were instituted for two principal Causes, for the ease of Jurors, and for the speedy exhibiting of Justice.

SECT. 8.

Justices of Oyer and Terminer.

(u) *Coke* 4. *Inst. fol.* 162.

(w) *Interfectionibus.*

(x) *Verborum prolationibus.*

(y) *Cambipartiis.*

As to the Justices of *Oyer* and *Terminer*, they are appointed either by (u) general or special Commission. By general Commission they are to enquire of Treasons, Misprisions of Treason, Insurrections, Rebellions, Murders, Felonies, Manslaughter, (w) Killing, Burglaries, Rapes of Women, unlawful Assemblies, Conventicles, (x) false News, Combinations, Misprision, Confederacies, false Allegations, Riots, Routs, Retainings, Escapes, Contempts, Falsities, Negligences, Concealments, Maintenances, Oppressions, Combinations (y) of Parties, Deceits, and other ill Deeds, Offences and Injuries whatever, and to do thereupon what appertains to Justice, according to the Law and Custom of the Kingdom.

(z) *Nisi pro enormi transgressione, ubi necesse apponere festinum remedium.* *Cl.* 14 *E.* 3. *part* 1. *m.* 41. *dorso.* *Hil,* 2 *H.* 4. *Rot.* 4. *Mich.* 1 *H.* 8.

Special Commissions were not granted, unless for enormous (z) Transgressions, where there was a necessity of speedy Remedy: In some cases we find the Justices of *Oyer* and *Terminer* have upon an Indictment found, proceeded the same day against the Party indicted. So *Thomas* (a) *Marks*, Bishop of *Carlisle*, before Commissioners of *Oyer* and *Terminer*, was Indicted, tryed, and adjudged all in one day for High-Treason. Likewise Sir *Richard Empson* was indicted of High-Treason, and tried all in one day. So *Robert Bell*, 10 *Dec.* 3 *E.* 6. and 10 *Eliz.* 4 *Aug. John Felton* was before Commissioners of *Oyer* and *Terminer* in *London*, indicted of High-Treason, and tried the same day, by the advice of all the Judges of *England.*

SECT. 9.

Of the Kings Erection of Courts.

What new Courts the King may erect.

In some Cases the King may erect new Courts of Justice, and grant Conusance of Pleas to a Corporation, to be kept after the Rules of the Law, not in a way of a Court of Equity, but may not alter the great Courts at *Westminster*, that have been time out of mind, nor erect a new Court of Chancery, Kings-Bench, Common-Pleas, Exchequer, *&c.*

Although in a proper Court, such as our Chancery, a Judge of Equity be allowed, yet if it were permitted in all other Courts, to expound the Law against the letter, and perhaps the meaning of the Makers, according to Conscience, as we speak, there would soon be introduced absoluteness and Arbitrary Power. There-

Therefore great Care is taken by thoſe that underſtand the Law, that matters be not left to the diſcretion of any Perſons Commiſſionated by the King to adjudge of any Cauſes. So the plauſible Statute (*b*) of *H.* 7. to put in Execution the Penal Laws, impowering Juſtices of Aſſize and of Peace, upon Information for the King, by their Diſcretion to hear and determine all Offences, and Contempts againſt any Statute unrepealed, was found to have Authoriſed *Empſon* and *Dudly* to commit upon the Subject unſufferable preſſures and oppreſſions. So that (*c*) ſoon after that Kings death it was repealed, and thoſe two brought to Tryal, and executed for their oppreſſions. So the Statute (*d*) 8 *E.* 4. of Liveries, *&c.* by the diſcretion of the Judges to ſtand as an Original is deſervedly repealed. In the Commiſſion of Sewers by Law (*e*) 3 *H.* 8. allowing the Commiſſioners to make Orders, *&c.* according to their Judgments, and Diſcretions; the word *Diſcretion* is interpreted by Lawyers, to diſcern by Law what is Juſt; as appears when a Jury do doubt of the Law, and deſire to do what is Juſt, they find the ſpecial matter, and the entry is, *Et ſuper tota materia petunt adviſamentum & diſcretionem Juſticiariorum*; that is, they deſire that the Judges would diſcern by Law what is Juſt, and give Judgment accordingly.

(*b*) 11 *H.* 7. *c.* 3.

(*c*) 1 *H.* 8. *c.* 6.

(*d*) *C.* 2.

(*e*) *Diſcretio eſt diſcernere per Legem quid ſit juſtum.* Coke Inſt. 4. fol. 41.

It was reſolved in the Court of *Common-Pleas* (when a new Court was (*f*) erected, 31 *H.* 8. to hear and determine according to Law and Cuſtom, or otherwiſe to their ſound diſcretion) That the laſt Clauſe was againſt Law. For when Laws are writ and publiſhed, Magiſtrates know what to command, and the People to obey; otherwiſe the Law muſt neceſſarily be errant, wandring, uncertain, and unknown; which is a (*g*) miſerable, yea, the moſt miſerable Slavery.

(*f*) *Whyte's* Sacred Laws, *p.* 33.

(*g*) *Miſer ſervitus ubi jus vagum.*

The Court of Star-chamber diſſolved.

This was the ground of the taking away the moſt Auguſt and very Ancient Court of the Star-Chamber; though appointed by Act of Parliament, (*h*) and conſiſting of very great Perſonages, as the Lord Chancellor, Lord Preſident of the Council, Lord Privy-Seal, Biſhops, Lords, and Juſtices. For (tho' there were other Reaſons that moved the Houſes to be ſo preſſing to get that Act paſs) the grounds of its Repeal alledged in the (*i*) Preamble of the Act, are, That the Judges have not kept themſelves to the points limited by the Statutes, and have undertaken to puniſh where no Law doth warrant, and to make Decrees for things having no ſuch Authority, and have inflicted heavier puniſhments than by Law warranted; and that all matters Examinable and Determinable before them, had their proper Remedy, Redreſs, and Puniſhment by Common Law, and in the ordinary Courts of Juſtice elſewhere. In the like manner, and on the ſame reaſon were the Court of Requeſt (*k*), before the (*l*) Preſident of the Marches of *Wales*, of the Preſident and Council in (*m*) the North, and of the County-Palatine (*o*) of *Cheſter*, either totally aboliſhed, or much eclipſed.

(*h*) 3 *H.* 7. *c.* 1. 21 *H.* 8.

(*i*) 17 *Car.* 1. *c.* 10.

(*k*) *Ibid. cap.* 9.
(*l*) *Cap.* 48.
(*m*) *Cap.* 49.
(*o*) *Cap.* 37.

Having

Having thus far diſcourſed of the ſeveral ſtanding Courts, I think it neceſſary to give an account of the Oath the Judges of either Bench are enjoyned to take; having before ſpoke of the Lord Chancellor, Lord Treaſurer, and Barons of the Exchequers Oath.

SECT. 10.

Of the Judges Oath.

COncerning this Oath, there is a Controverſie betwixt Mr. (p) *Prynne* and Sir *Edward Coke*, the latter affirming it to be in our Printed Statutes, but not upon Record; which Mr. *Prynne* diſproves thus, That the Oath of the Judges, Barons of the Exchequer, and Juſtices Itinerant, and the Ordinances annexed to the Oath were made by the King (becauſe of divers complaints to him) by the aſſent of the great men, and other wiſe men of his Council, and commanded to be openly publiſhed by the Sheriffs of every County, by (q) ſpecial Writs iſſued to them, for the Reaſons ſpecified in the beginning and cloſe of the Writs, at leaſt three Months before the Parliament was held that Year; and they are all entred upon Record (as they are Printed in the Statute Books at large) (r) 20 *E.* 3. in the Clauſe-Rolls, but not in the Parliament or Statute-Rolls of that Year, becauſe not made in, but before the Parliament. From whence I note a good Argument of the Kings Prerogative in appointing Judges, and Commiſſionating them himſelf, without any Parliamentary concurrence, ſince he appoints the very Oath which was to direct them in their Office out of Parliament.

(p) Animadv. on *Coke*'s 4. *Inſt. fol.* 38.

(q) 7 *May*, 20 *E.* 3.

(r) *Cl.* 20 *E.* 3. *part* 1. *m.* 12, 13.

We find the Commons ſo well pleaſed with this Oath, that in the (s) Parliament 20 *E.* 3. they petitioned the King, that the Juſtices of Aſſiſe and Enquiry might be ſworn by the ſame Oath as the Juſtices of the Bench, and that the chief of them might have power to ſwear the reſt: which the King aſſented to with ſome Qualifications: but when in the Twenty firſt of his Reign, they petitioned that his other Miniſters might take the Oath, and might be ſworn to take nothing from any other; the King anſwered, that he would adviſe what other Miniſters ſhall be fit to take the Oath.

(s) *Rot. Parl.* 20 *E.* 3. *num.* 25. Abridgment of Records, *p.* 48.

Mr. *Prynne* refers us to the *Cl.* 18 *H.* 3. *m.* 19. *Cl.* 35 *E.* 1. *m.* 7. *Cl.* 1 *E.* 2. *m.* 19. and *Cl.* 5 *E.* 3. *m.* 27. for ſome Clauſes of the Oaths of Juſtices, agreeing with thoſe preſcribed to the Kings Council. But the Oath as it hath been after uſed, is to this purpoſe:

That they ſhall ſwear well and lawfully to ſerve our Lord the King, and his People in the Office of Juſtice, and lawfully counſel the King in his Buſineſs; not counſel or aſſent to any thing, which may turn him in damage, or diſheriſon, by any manner, way, or colour, and ſhall not know of any ſuch thing,

thing, but cauſe the King to be warned thereof by themſelves, or others; ſhall do equal Juſtice, and Execution of Right to all the Subjects, and take neither by themſelves nor others, privily, or apertly, Gift or Reward, of Gold or Silver, nor of any thing which may turn to their profit, unleſs it be Meat or Drink, and that of a ſmall value, of any man that ſhall have any Plea, or Proceſs hanging before them, *&c.* ſhall take no Fee as long as they are Juſtices, nor Robes of any man great or ſmall, but of the King; give no Advice to any man, great or ſmall, where the King is Party.

If any, of what condition ſoever come before them in their Seſſions, with force and Arms, or otherwiſe againſt the Peace, or againſt the Statute thereof made, to diſturb the execution of the Common Law, or to menace the People, that they may not purſue the Law: That they cauſe their Bodies to be Arreſted, and put in Priſon; and if they cannot be Arreſted, that the King be certified: That they themſelves, nor others maintain no Plea, or Quarrel hanging in the Kings Court, or elſewhere in the Country: That they deny to no man Common Right by the Kings Letter, nor none other mans, nor for none other Cauſe; and in caſe any other Letters come to them contrary to the Law, they do nothing by ſuch Letters, but certifie the King thereof, and proceed to execute the Law, notwithſtanding any ſuch Letters: That they ſhall procure the profit of the King, and of his Crown, and if in default, ſhall be at the Kings Will, of Body, Lands, and Goods, thereof to be done as ſhall pleaſe him.

Obſervations on this Oath.

There is in this Oath as great Security taken, as morally can be, that the Judges perform their Office uprightly, and judge according to the Law; and if this will not make them wary how they give Judgment contrary to Law, there are other Conſtraints upon them: As, firſt, That the King may diſplace them when he pleaſes, they holding their Places only *durante beneplacito.* Secondly, The Houſe of Commons may queſtion them for any falſe Judgment and Miſcarriage in their Office; which muſt be a great Check and deterring of them from giving any unjuſt Judgment, either for Lucre-ſake by Bribes, or partiality of Affection.

Judges puniſhed for breaking their Oath.

There are, beſides others, two illuſtrious Examples of puniſhment of Corrupt Judges, the one of Sir *William Thorp*, (*i*) condemned for breach of his Oath in taking Bribes. He was Indicted before the Earls of *Arundel*, *Warwick*, and *Huntingdon*, the Lord *Gray*, and Lord *Burghers*, 24 *E.* 3. and the Record ſaith, *Ideo conſideratum per dictos Juſticiarios aſſignatos, ad judicandum ſecundum voluntatem Regis, & ſecundum Regale poſſe ſuum*; becauſe he broke the Oath which he took to the King, and ſo was adjudged to be hanged. The (*u*) Record of this Judgment was brought into the Parliament 25 *E.* 3. (the King having by a Writ under the Privy-Seal ſtayed his Execution) and it was read openly before the Lords, and all the Lords affirmed

(*t*) *Rot. Parl.* 25 *E.* 3. *Rot.* 10.

(*u*) Exact Abridgment, *p.* 74.

affirmed the Judgment to be good, provided this Judgment ſhould not be drawn into example againſt any other Officers who ſhould break their Oaths, but (z) only thoſe that took the ſaid Oath of Juſtices and broke it; ſuch to whom the Royal Laws of *England* are committed.

(z) *Qui prædictum Sacramentum fecerunt & fregerunt, & habent Leges Regales Angliæ ad cuſtodiendas.*

The other is the Famous Sir *Francis Bacon* Lord St. *Albans*, who being Lord Chancellor was found guilty of taking Bribes by his Servants; whom though many (for his great Learning) would acquit, as leaving too much to his Servants, yet he fell an illuſtrious example of Juſtice againſt the higheſt Judges: and in the forecited Record againſt Sir *William Thorp*, it is apparent that the Lords (who in thoſe days were the ſole Judges in Parliament) thought no perſons breach of Oath was capitally to be puniſhed but only the Juſtices.

Before I come to ſpeak to ſome of the long Parliaments writing Champions miſapplication of the Kings Power in his Courts, I think it expedient to give ſome Characters I have met withall of the qualifications of Judges.

(a) MS. Speech, *penes Rad. Thoresby de Leedes, Gen.*

In a Speech made to Juſtice (a) *Manwood*, when he was choſen Lord Chief Baron, the Chancellor tells him, There are four things requiſite in a Judge: Firſt, His knowledge of the Law, which is preſumed every one hath that the King appoints to be his Juſticiary. Secondly, Diſcretion, that though in his Judgment he may vary from the letter of the Law, yet he may never judge contrary to the intention of it, which is *Animus Legis*. Thirdly, Integrity, for it were better to have a Judge of convenient learning and diſcretion, that would command and rule his Affection and Judgment, than one of excellent knowledge and diſcretion, that will ſubmit the ſame to his corrupt Affections. Fourthly, Care and diligence. For if a Judge be furniſhed with all the preceeding qualifications; yet if he be ſlothful, and do not expedite his Judgment, all the former ſerve to little purpoſe, for *qui dies diſtulit, dies noluit*.

(b) Eſſays.

My Lord St. *Albans* (b) (though he fell, as before I have noted, under great cenſure) yet in his Eſſays tells us that a Judge's Office is *Jus dicere, non Jus dare*, that they ought to be more wiſe than witty, more reverend than plauſible, more adviſed than confident; and above all things that Integrity was their Portion and proper Vertue; The unjuſt Judge being a Capital remover of Land-marks: Injuſtice making Judgment bitter, and delay ſowre.

(c) E. of *Clarendon*'s Survey, *p.* 125.

Another famous (c) Chancellor (whoſe unexpected exile, after he was raiſed to the happieſt Eſtate of a Subject, may teach all to judge no State of Felicity aſſured upon Earth) tells us that Judges are preſumed by Education to be fitted for the underſtanding of the Laws, and by their Oaths bound to judge according to Right, and ſo muſt be the moſt competent to explain the difficulties of the Law; which no Soveraign, as Soveraign, can be preſumed to underſtand and comprehend; and that the judgments and deciſions, thoſe Judges make, are the

the Judgment of the Soveraign, who hath not qualified them, but Authoritatively appointed them to judge in his ſtead, and are to pronounce their Sentence according to the reaſon of the Law, not the reaſon, or will rather he means, of the Soveraign. But now I proceed to other matters.

The Long Parliament impeached all the Judges that had voted the legality of Ship-mony, as alſo brought to their Bar the Lord Chancellor, that thereby they might ſtrike a greater terror on the Kings Loyal Subjects, eſpecially in the Houſe, to make them comply with them: and though they would have had the Power of nominating and removing the Judges, and have rent that branch of his Royal Prerogative from him; yet they not truſting, if they effected this, that it would do them any ſervice (when they had put in ſuch Judges as they liked) if the King might ſtill Commiſſionate them according to old form *pro beneplacito*: Therefore they preſſed hard, that every Judge ſhould continue *quamdiu ſe bene geſſerit*; which I only note, to ſhow they were deſirous to new model the whole Government.

The Long Parliaments Impeachment of Judges.

They would alter *pro beneplacito*.

As the long Parliament of 1641. by their diſſolving of Church-Government, gave birth to varieties of Opinions, Schiſms, and Hereſies in Religion; ſo by their deſign of unlooſening mens Obligation to the Monarchy, they were forced to make uſe of many falſe Inferences and Judgments, of the known Laws: Amongſt which one was, when they were beaten off from the ſeveral pretences of having ſome Paramount Power over the King, whereby he ſtood obliged to reſign his reaſon to their Votes; they alledged that ſince the King could not reverſe a Judgment given in an inferior Court, *a fortiori*, he could not fruſtrate their Votes, being the Supreme Court as well as Council.

The Long Parliament endeavours to weaken the King's Prerogative.

In Anſwer to which it is to be conſidered, that in other Courts the Judges ſuſtain the Perſon of the King, the Law is depoſited in the hands of the King, and all Juſtice is adminiſtred by him, and in his name: ſo that his conſent is by Law involved in what by Law they do. *Authoritas rei indicatæ vim legis habet.* So there can be no Appeal from the King to himſelf; the King delegates his Power to them, *& quod Rex facit per Officiarios, per ſe facere videtur*, they give Judgment for the King not for themſelves; to that the Laws Authorize them and none but them: ſo that the Kings aſſent or diſſent cannot fruſtrate their Judgment, which they render *in invitos*, againſt the will of one of the Parties at leaſt, becauſe *expedit Reipublicæ ut finis ſit datus.* Therefore as to the Power of declaring Law, the King is reſtrained ordinarily to the Mediation of the Judges, who are to give the genuine ſence, and Interpretation of the Law, according to Art, and rules of ſcience; and ſo by their Interpretation and Judgment therein, they bind both King and Subject.

How Judges in their Judgments ſuſtain the Perſon of the King.

(d) Caſe of our Affairs, p. 4.

Judges to apply themſelves to the King.

(e) *Poſtnati.*

Yet in ſome (*d*) caſes the Judges do not only conſult among themſelves, to determine a doubtful caſe, but muſt have recourſe to the King as the Fountain of Juſtice: ſo (*e*) *ſi diſputatio oriatur, & Juſticiarii non poſſunt interpretari, ſed in dubiis & obſcuris Domini Regis expectanda eſt Interpretatio, & voluntas, cum ejus eſt Interpretari cujus eſt condere.*

(f) Commonwealth, *part* 2. *c.* 10.

It is, ſaith Sir *Thomas Smith*, (*f*) to be taken for a Principle, that the Life and Member of an Engliſh man is in the Power only of the Prince, and his Laws: ſo that when any of his Subjects is ſpoiled either of life, or limb, the Prince is endammaged thereby, and hath good cauſe to ask account how his Subjects ſhould come to that miſchief; and foraſmuch as the Prince, who governeth the Scepter, and holdeth the Crown of *England*, hath this in his care and charge, to ſee the Realm well governed, the Life, Member, and Poſſeſſions of his Subjects kept in peace, and aſſurance; he that by violence ſhall attempt to break that Peace, and aſſurance, hath forfeited againſt the Scepter and Crown of *England*.

Why the King only to appoint Judges.

So that from hence it appears how equal and juſt it is that the King ſhould have the appointment of Judges, Juſtices of Peace, *&c.* that neither his Peace ſhould be broken, his Subjects injured in their Perſons, or Eſtates, nor his Laws be violated. There being ſufficient Proviſion in the Law againſt the violating of Juſtice by the Judges who are to obſerve theſe following Statutes. 1. *Magna Charta*, That no Freeman ſhall be taken or Impriſoned, or diſſeiſed of his freehold, or liberty, or Cuſtoms, or be Out-lawed, or exiled, or otherwiſe deſtroyed: That the King (*g*) will not paſs upon him or condemn him but by lawful Judgment of his Peers, or by the Law of the Land: and by another, 5 *E.* 3. That no man ſhall be Attached by any Accuſation, nor forejudged of Life or Limb, nor his Lands, Tenements, Goods, nor Chattles ſeized into the Kings hands againſt the form of the Great Charter, and the Law of the Land: and 25 *Ed.* 3 (*h*) That none ſhall be taken by Petition, or Suggeſtion, made to the King, or to his Council, unleſs by Indictment or Preſentment of good and lawful People of the ſame Neighbourhood, where ſuch deed be done in due manner, or by Proceſs made by writ original at the Common Law: and ſo by (*i*) another, That no man, of what State and Condition ſoever he be, ſhall be put out of his Lands or Tenements, nor taken, nor Impriſoned, nor diſinherited, without being brought to anſwer by due Proceſs of Law: and in another, (*k*) That no man be put to anſwer without Preſentment before Juſtices, or matter of Record, or by due Proceſs or Writ original, according to the old Law of the Land.

What Judges are to obſerve.

(g) *Cap.* 9.

(h) *Cap.* 4. *Stat.* 5.

(i) 24 *E.* 3. *c.* 3.

(k) 41 *E.* 3. *c.* 1.

But I muſt leave this to the Learned in our Municipal Laws, and ſhall note ſome few things from old Authors that may diſcover how much juſt Judgment hath ever been valued.

The impartiality, and yet the tenderneſs and compaſſion in inflicting

inflicting Punishment, is notorious in *Zeleucus*, who while he governed the *Locrians*, made a Law, That whoever committed Adultery, should have both his Eyes put out; and his Son being found guilty, he commanded the Law to be put in Execution: and the body of the Citizens interceding, he ordered one of his Sons Eyes to be put out, and likewise one of his own, that the Law might not be broken, and yet that he might not be over rigid to his Son.

Impartiality requisite in a Judge.

The (*l*) Orator tells us, That Justice should neither be warped by Favour, nor broken by Power, nor adulterated by Money; and in another place (*m*) saith, That he puts off the person of a Judge, who assumes that of a friend. He indeed is an upright Judge in whose hand the Ballance of Justice neither totters nor falls, by the Authority of any Person. *Talis debet esse Juris minister, ut in ejus manu nullius authoritate personæ, titubet aut vacillet libra Justitiæ.*

(*l*) *Neque inflecti gratia, neque perfringi potentia, neque adulterari pecunia possit.* Pro Cecinna.

(*m*) *Exuit personam Judicis, quisquis Amici personam induit.*

Besides the avoiding of Partiality, it is necessary in every Judge, that he fully examine what is brought before him, and not with too great Precipitancy determine matters upon (*n*) the hearing only of one side: for though he may chance to do Justice in such a Case; yet he doth not do justly, that fully hears not both Parties Allegations.

Precipitancy to be avoided.

(*n*) *Qui statuit aliquid, parte inaudita altera, æquum licet statuit, haud tamen æquus est.* Senec. Medæa.

It is a very mischievous thing, when Judges delay the Executing of Justice. (*o*) *Cassinus*, out of the Chronicles of *Alexandria* tells us, That *Juvenalis* a Widow, complaining to *Theodorick* King of the *Goths* and *Romans*, that a Suit of hers in Court, was drawn out for the space of three Years: *Theodorick* called the Judges before him, and acquainted them with the Complaint, and commanded them to do her speedy Justice, which within two days they did; and being again called by the King, he asked them how it came to pass that they had dispatched that in two days, which had not been done in three Years. They answered, that His Majestie's Recommendation had made them finish it so soon. To whom the King replied, That when he put them into Office, he consigned all Pleas to them, and other Proceedings; and since they had spun out the Business for three Years, that required but two days dispatch, they should die, and at that Instant commanded their Heads to be smitten off.

(*o*) Holy Court, *Tom.* 1. *lib.* 3. *p.* 90. Delays in doing Justice mischievous.

We find in Sir *Edward Coke* (*p*) a Court for redress of Delays of Judgment, in the Kings Great Courts, raised by Statute, 14 *E.* 3. whereby one Prelate, two Earls, and two Barons, the Chancellor, Lord Treasurer, the Justices of both the Benches, and other of the Kings Council have Power to call before them the Tenor of Records, and Processes of such Judgments so delayed, and to proceed to take a good accord and Judgment, and so remand all to the Justices before whom the Plea did depend.

Court to redress Delays.

(*p*) 14 *E.* 3. *c.* 5. *Stat.* 1. *Rot. Parl.* 2 *R.* 2. *num.* 63. confirmed by Parliament.

He likewise (*q*) tells us, That by the Common-Law, it is required, that both *plena & celeris Justitia fiat*, and all Writs of *Pracipe quod reddat*, are *quod juste, & sine dilatione reddat*, &c, and that there

(*q*) 4. *Instit. c.* 6. *fol.* 67.

there did, and yet doth lye a Writ, *de procedendo ad Judicium*, when the Juſtices or Judges of any Court of Record, or not of Record, delayed the Party, Plaintiff, or Defendant, Juſtice; and in Caſe the Prelate, the two Earls, two Barons, the Chancellor, Treaſurer, *&c.* may not for the Difficulty, determine it, then to bring it to the next Parliament, there to have a final accord.

From this whole Diſcourſe I hope it is apparent, that as our Kings authorize the Juſtices to do right to every one, according to the Laws and Cuſtoms of *England*; ſo the Judges cannot well fail of performing it. Before I end this Chapter, I cannot omit the inſerting of ſome of the Expreſſions that I find in the *Saxon* Laws, whereby the deſire thoſe Kings had that equal Juſtice, ſhould be adminiſtred, is very manifeſt. The eighth Law of King *Ina* inflicts a mulct of thirty Shillings upon every (*r*) Shireman or other Judge, that grants not Juſtice to him that requires it, and beſides that, within a Week he afford him right; in *Saxon* thus, *& binnan ſeoffon nihte gedo hine rihtes wrythe.*

(*r*) *Hwilcum ſcirmen othbe othrum deman.*

The firſt of the ſecular Laws of King *Edgar*, runs thus: *That every one enjoy the Benefit of right Judgment* (whether he be Poor or Rich) *but in exacting of Puniſhments, let there be that Moderation, that they may be attempered to Divine Clemency, and may be tolerable to Men.* The *Saxon* runs thus, That *cle màn ſy folc rihtes wyrth.* (*ge earm ge eadig*) and him *mon righte Domas deme. & ſy on thærebote ſwylec forgyffenyſſe, ſwylec hit fore God ge beorglice ſy, and for weoruld aberendlic.*

The third Law of the ſame King is, that the Judg who ſhall paſs falſe Judgment on any, ſhall pay the King a Hundred and twenty Shillings, unleſs he confirm it by Oath, that he did it by Error and Ignorance, not for Malice. However he ſhall be removed (*s*) out of his place, unleſs he obtain the ſame again of the King. By which it further appears, that in thoſe days the King removed and placed Judges at his Pleaſure.

(*s*) *Et tholige a his Thegnſcipes, butan he æft æl thæm Cyng gebicge: ſwa he hin gethafian wills.*

The firſt of the ſecular Laws of King *Canutus* runs thus:

(*t*) *That man rihte laga app arære, & ægh wylec unlaga georne aſſylle.*

Firſt I will that Man (*t*) ſet up right Laws, and unjuſt Laws be ſuppreſſed, and that every one according to his Power, pluck up utterly by the Roots, all unrighteouſneſs, and ſet up Gods Right, *i. e.* Divine Juſtice; and for the time to come, the Poor as well as the Rich enjoy right Judgment, and to both of (*u*) them right Dooms be deemed.

(*u*) *Folc rihtes wyrthe & him man rihte domes deme.*

Then the next Law is for exhibiting Mercy in judgment, that even in Capital Matters, ſuch moderation be uſed in impoſing the mulct, that it be (*w*) attempered to divine Clemency, and be to be born by Men, and that he that judgeth, think in his Mind what he asks, when he ſaith in the Lords Prayer, *and forgive us our Debts or Treſpaſſes, as we forgive them that treſpaſs againſt us*: and he forbids that any Chriſtian be put to Death for any ſmall or contemptible cauſe; that for a (*x*) ſmall matter they ſuffer not to periſh, the work of Gods Hands, which he hath redeemed with a great price.

(*w*) *Swa it for Gode ſy gebeolice & for worulld aberendlice*: As in the Law of King *Edgar*.

(*x*) *Et ne forſpille man for litlum, Godes handgeweorce & his agenne ceap the he deorgevoht.*

In

In the Eleventh Law we find that the King ſaith, That by all help and work it is to be endeavoured by what reaſon principally he may gain Counſel that may (*y*) confirm ſuch things as are for the profit of the Republick, and may confirm Chriſtian Piety, and may totally overthrow Injuſtice from hence, that Profit at laſt coming to the Kingdom, that Iniquity may be ſuppreſſed, and Juſtice may be ſet up in the Preſence of God and Men.

(*y*) *His man fyrmeſt mæg ræd arediæn Theode to Thearfe & ribtne Criſtendom ſwy thort aræran & ægh wilec unlagu georne aſſyllan.*

I could add more, but I ſhall have occaſion in the next Chapter to mention ſomething of this Subject, and ſhall only cloſe with that Admonition of King *James* (*z*) the Firſt to the Judges in the Star-Chamber, 1616. wherein he gave them in Charge to do Juſtice uprightly and indifferently without delay, without Partiality, Fear, or Bribes, with ſtout and upright Hearts, with clean and uncorrupt Hands, and not to utter their own Conceits, but the true meaning of the Law, not making Laws, but interpreting the Law (and that according to the true Sence thereof, and after deliberate Conſultation) remembring their Office is *Jus dicere*, not *Jus dare*.

(*z*) *Dalton's* Juſtice of Peace, *c.* 2.

CHAP. XXXIV.

Of Juſtices of Peace, and their Seſſions.

SIR *Edward Coke* (*a*) obſerves, that the Conſtitution of Juſtices of Peace is ſuch a form of ſubordinate Government, for the Tranquillity, and quiet of the Realm, as no part of the Chriſtian World hath the like; which may be true in the particular Limitation of the Power. But that in other Countries ſuch like Officers have been appointed, particularly for the preſervation of Peace, is evident in the ancient Laws of the *Wiſigothes*, (*b*) compiled by *Theodoricus* their King, about the Year of our Lord, 437. which conſtituted *Pacis Aſſertores*, and appointed them Judges to hear and determine thoſe cauſes, *quas illis Regia deputaverit ordinandi Poteſtas*. So in the *Sicilian* (*c*) Laws, compiled by the Emperor *Frederick* the Second, we find one Title, *de cultu pacis, & generali pace in Regno ſervanda*, and another, *de* (*d*) *officio Juſticiaratus*; where the Title, Office, and Commiſſion of the *Juſticiarii Regionum* is at large recited, almoſt in Parallel terms, with ours at this Day.

(*a*) 4. *Inſtit. c.* 31. *fol.* 170.

Officers like our Juſtices of Peace anciently in other Countries.

(*b*) *Lib.* 2. *c.* 16.

(*c*) *Anno* 1221. *Ibid. p.* 704. *to* 722. *lib.* 1. *tit.* 8.

(*d*) *Ibid. tit.* 41.

The *Capitularia Caroli* (*e*) *magni*, the *Burgundian*, *Alman*, *Bavarian*, *Saxon*, *Longobard*, *Ripuarian*, and *Friſons* Laws, mention ſuch Officers, for preſerving the publick Peace, and (*f*) puniſhing all Malefactors, and infringers of the publick Peace, as we have.

(*e*) See *Fred. Lindebrogus Codex Legum Antiq.*

(*f*) See *Prynne's Irenarch. Redivivus, p.* 1. *ad* 5.

At

At the Common-Law, before Justices of Peace were made, there were sundry Persons, to whose Charge the maintenance of the Peace was recommended, and who with their other (*g*) Offices, had (and yet still have) the Conservation of the Peace annexed to their Charge, as incident to, and inseparable from their said Offices: yet they were only stiled, and so now are, by their Offices; the Conservation of the Peace being included therein.

(*g*) *Dalton*'s Justice of Peace, *c.* 1. Conservators of the Peace.

First, the King is the principal (*h*) Conservator of the Peace within his Dominions, and is properly *Capitalis Justiciarius Angliæ*; in whose Hands at the beginning, the Administration of all Justice, and all Judicature in all Causes, first was, and afterwards by, and from him only was the Authority derived and given to all; yet the Power nevertheless remains still in himself, insomuch that he may himself sit in Judgment, as in ancient times the Kings here have done, and may take Knowledg of all cases and causes.

(*h*) *Idem.* The King the principal Conservator of Peace.

Before I leave this Head, I cannot pass by the Act of (*i*) *H.* 7. wherein is so fully declared the King's Care, to have due Administration of Justice, as in the close of the last Chapter I have only hinted. The Preamble saith, The King considereth that a great part of the Wealth and Prosperity of the Land, standeth in that, that his Subjects may live in Surety, under his Peace, in their Bodies, and Goods, and that the Husbandry of this Land may encrease, and be upholden, which must be had by due Execution of Laws and Ordinances, and so commandeth the Justices to execute the tenor of their Commission, as they will stand in Love and Favour of his Grace, and in avoiding the pains that he ordained, if they do the contrary. If they be lett or hindred, they must show it to the King; which if they do not, and it come to the Kings knowledg, they shall be out of his Favour, as Men out of *Credence*, and put out of Commission for ever.

(*i*) 20 *H.* 7. *c.* 11.

The Reasons why Justices of Peace made.

The King's Care for right and easie Administration of Justice.

Moreover he chargeth and commandeth all manner of Men, as well Poor as Rich (which be to him all one in due Administration of Justice) that is hurt or grieved, (in any thing that the said Justice of Peace may hear, determine, or execute in any wise) that he so grieved make his complaint to the next Justice of Peace; and if he afford no remedy, then to the Justices of the Assise; and if he find no remedy there, then to the King, or Chancellor, *&c.* and as a further security it is added, And over that his Highness shall not lett, for any favour, affection, costs, charge, nor none other cause, but that he shall see his Laws to have plain and true execution, and his Subjects to live in security of their Lands, Bodies and Goods, according to his said Laws.

Other Conservators of the Peace.

Thus we see who is the Principal, and Royal Conservator of the Peace: others are the Lord Chancellor or Lord Keeper, Lord Treasurer, Lord High Steward of *England*, Earl Marshal, Lord High Constable of *England*, every Justice of the Kings Bench, and Master of the Rolls, who have the power included in their

their Office, and over all the Realm, when they are preſent, may award Precepts, take Recogniſances for the Peace; of which and others *Lambard* in his *Eirenarche* may be conſulted, and how far Juſtices of Aſſiſe, Stewards of the Sheriffs Turn, and Court of Pye-powders, the Sheriffs, Chief Conſtable, Coroners, and Petty Conſtables may commit to Ward breakers of the Peace in their view, though they cannot take ſurety at the requeſt of any man, that being peculiar to the Juſtices of Peace's Office.

Sir *Edward Coke* (*k*) ſaith, that the firſt inſtitution of Juſtices for the preſerving the Peace, was 6 *Ed.* 1. but Mr. *Prynne* will have it of older date, becauſe he finds that King *Henry* the Third by ſeveral Patents, or Writs from the 17*th* to the end of his Reign, did conſtitute and appoint ſeveral perſons in moſt Counties of the Realm, to be Guardians and Preſervers of the Peace of the Realm; and in the Patent 51 *H.* 3. *m.* 10. 13. *dorſo*, it is *dilectis & fidelibus ſuis cuſtodibus pacis Com. Linc. North. Ebor. & Vicecom. eorundem Comitat.* and the like 54 *H.* 3. *m.* 21. *d.*

(*k*) *Term. Paſch. fol.* 176. 4. *Inſt. Coram Rege prima fuit Inſtitutio Juſticiariorum pro Pace conſervanda. Ad Pacem noſtram conſervandam.*

But the firſt regular ſettlement of them ſeems to be *Anno* 1327. 1 *Ed.* 3. *c.* 16. The Authorities afterwards were further explained 4 *Ed.* 3. *c.* 2. 18 *Ed.* 3. *c.* 2. 34 *Ed.* 3. *c.* 1.

Sir *Edward Coke* (*l*) tells us that the Commiſſion of Peace ſtood over-burthened, and incumbered with divers Statutes, ſome whereof were before, and ſome ſince repealed, and ſtuffed with many vain and unneceſſary repetitions, and many other corruptions crept into it by miſtaking of Clerks, *&c.* for amendment and correction whereof, (*m*) Sir *Chriſtopher Wray* Chief Juſtice of *England*, aſſembled all the Judges of *England*, and upon peruſal had of the former Commiſſion of Peace, and due conſideration had thereupon, and often conferences betwixt themſelves, they reſolved upon a reformation of the form, with divers additions and alterations, both in matter and method, as it ſtood in Sir *Edward*'s time; and he ſaith, It needed another Reformation by reaſon of Statutes ſince repealed, and others expired; of which he gives ſeveral inſtances.

(*l*) *Ibid.* 171.

(*m*) *Mich.* 32 & 33 *Eliz.*

Therefore he ſaith, It is a good rule for all Judges, and Juſtices whatſoever, that have Juriſdiction by any Statute, which at the firſt was Temporary or for a time, to conſider well before they give Judgment, Whether that Statute hath been continued or made perpetual; and if at firſt it was made perpetual, Whether it be not repealed or altered by any later Statute.

What Commiſſions, Patents and Writs were iſſued out by King *Edward* the Firſt, for preſerving the Peace of the Realm, ſuppreſſing, ſeiſing and puniſhing of thoſe who diſturbed it, may be found *Cl.* 9 *Ed.* 1. *m.* 10. *d.* in *Rylies* (*n*) Appendix, ſo there is a Patent 14 *Ed.* 1. *m.* 15. 15 *Ed.* 1. *m.* 13. *de militibus conſtitutis ad Articulos in Statuto de conſervatione pacis edito contentos obſervandos*, conſtituting perſons of note in every County to obſerve them, named in the Record: and ſo for other Kings Reigns,

(*n*) *P.* 443, 451, *to* 457, 433, 480. *Prynne*'s Animadv. *fol.* 149.

(o) Sir *Edw. Coke*, 4 *Inst.* *Ryley's* Appendix, *p.* 521, &c. 537, 563.

Reigns, in the Authors in the (o) Margent, the exact Abridgment of the Records of the Tower, *Tit. Justices of Peace*, and *Prynne's* *Irenarchus Redivivus.*

The constituting, and making of Justices of Peace, is inherent in, and inseparable from the Crown, as appears by the Statute 27 *H.* 8. *c.* 24.

(p) *Dalton*, *c.* 3.

(p) Some are Justices by Act of Parliament, as the Archbishop of *York*, Bishop of *Duresm*, and *Ely*, and their Successors: others by the Kings Charters, as Mayors and other Officers of Corporation Towns.

Others are by Commission, which are properly Justices of Peace, to take care not so much of the Publick Discipline, and correction of manners, as for the Peace, and security of the High-ways; they being at their Quarter-Sessions to hear and determine of Felons, Breakers of the Peace, Contempts and Trespasses, to suppress Routs, and Tumults, restore possessions forceably entred, &c.

(q) Sir *Tho. Smith's* Commonwealth, *part* 2. *c.* 22.

Who are chosen to be Justices of Peace.

They (q) are elected out of the Nobility, Knights, Esquires, and Gentlemen, and such as be learned in the Laws, such and such number as the Prince shall think meet, and in whom for wisdom and discretion he putteth his trust, being mostly Inhabitants within the County, saving that some of the High Nobility, and chief Magistrates for honour sake are put in all or most of the Commissions. Those have no time limited but by Commission from his Majesty, alterable at pleasure. At first they were but four, after eight, and now thirty or forty in a Shire, either by increase of riches, learning, or activity in Policy and Government: more being found than anciently, who have either will or power, or both to do their King and Country service; and they are not too many to handle affairs of the Commonwealth, especially for the benefit of the Subject, that they may have in all parts of the County, one or more, not very remote, to apply themselves to. Each of them hath Authority, upon complaint to him made of any Theft, Robbery, Manslaughter, Murther, Violence, Complots, Routs, Riots, unlawful Games, forceable Entries, Excess in Apparel, Conventicles, evil order in Ale-houses, and Taverns, of Idle and Vagabond Persons, Masters and Servants not observing the Laws, Rapes, false Moneys, Extortions, or any such Disturbances of the Peace, quiet and good order of the Shire, to commit the Persons supposed to be Offenders to the Prison, and to charge the Constable or Sheriff to bring them thither, and the Jaylor to receive them till the next Quarter-Sessions when the Sheriff or his Under-Sheriff with his Bailiffs be to attend him, where Informations are given in to them by Bill, which is shown to the Juries: and if they find just cause for the complaint, they find the Bill, and the Party is Indicted, and Tryed by a Jury of twelve men, at the Kings Suit; for the King is reckoned the one Party, and the Prisoner the other.

At the King's Pleasure.

Much increased in number.

For the better distributing of Justice.

The Faults they may punish,

at their Sessions.

They

They are also to order the repair of Bridges, High-ways, the Poor, the lame Souldiers pensions, and do many things besides according to the Power given in their Commissions, which particularizeth all things they are to take Cognizance of; sometimes, upon Suspicion of War, to take care for the order of the Shire, and sometimes to take Muster of Harness, and able men.

Instructions given to Justices of the Peace.

Once in a year or two the Prince with his Council, saith a Manuscript I have seen, chuseth out certain Articles (out of Penal Laws made to repress the pride and evil rule of the People) and sends them down to the Justices, willing them to meet together, and consult among themselves, how to order the matter most wisely, and circumspectly; whereby the People might be kept in good order and obedience according to Law: and they after a certain space meet, and certify the Prince, or his Privy-Council, how they do find the Shire in rule and order touching those points, and all other disorders.

(r) Part 2. tit. *Justices of Peace.*

How beneficial the Institution of Justices of Peace.

There was never, saith Sir *Thomas Smith* (k), in any Commonwealth devised a more wise, a more dulce and gentle, or more certain way to rule the People, whereby they are kept always as it were in a Bridle of good order, and sooner looked to, that they do not offend, than punished when they have offended: for seeing the chief Persons of Quality and Interest among them, have such charge and Authority given them by the King; and if occasion be, do commit, cause to be Indicted and punished, or sent to Prison for disobedience, Offenders against the Laws; It curbeth and terrifieth Offenders so, that it is a new Furbishing of the good Laws of the Realm, and a continual repressing of Disorders, which the Common sort of People are too prone to, if it were not for this impending lash, which every where is held over Criminals.

The Law it self, as registred and printed, is but a dumb and dead thing; the Ministers of the Law are those that give life to it: and for that end were Justices of the Peace Constituted, who being Gentlemen of Interest, and parts, are the fittest Instruments to see the Laws duly Executed, which are Committed to their Charge: and it is greatly advantagious to the Country, that at every Quarter-Sessions, in the face of the Country, one of the Justices of the Peace gives a charge to the Jurys; wherein, with learning and Judgment, he acquaints them with the Excellency, Antiquity, and Utility of Monarchical Government, the usefulness of those Laws, Wise and Gracious Princes have granted to their Subjects, the excellent Composure, Contexture and Harmony in the Government, and many other particulars fit for them to know, as good Subjects and good Neighbours.

They are principally concerned in seeing to the Execution of several Laws.

Having met with some Speeches made in Queen *Elizabeth*'s time which relate either to Justices of the Peace, or the Exe-

cution of Laws in general; I think it may not be unacceptable to the Reader to underſtand in what manner that Queen cauſed her Chancellor to quicken the Execution of the Laws: Some touches of which follow. (*s*) By the Conſervation of Peace and Concord, every Commonweal hath a perfect Foundation to begin, marvelous good courſe to increaſe, a ſtrong Pillar to ſuſtain it, and a ſtrong Buckler to defend it. The plain and good order of each County conſiſteth in the well or evil Executing of Juſtice: for thereby either every man enjoyeth his own, and the whole Commonweal is in a calm and even Temper; or by remiſneſs in Execution, the Free-Booters and Beaſts of Prey are let looſe to rob and deſpoil ſome, and affright the reſt, and leave all in unſecurity.

(*s*) MS. Speech to the Juſtices Itinerant, *Anno* 1559.

The Conſervation of Peace their principal Charge.

How can, ſaith he, Juſtice baniſh (*t*) Enormities when her Miniſters are ſlothful, making no account of any of the Common Cauſes of their Country; and under the notion of being accounted quiet men, they ſeek only eaſe, profit, and pleaſure to themſelves, and to be ſuſtained by other mens care and labour: whereas the Horſe-Maſter provideth for the good Government of his Horſe, Bits or Brakes, according to the hardneſs or tenderneſs of his Mouth.

(*t*) MS. Speech at the end of the Parliament, *Anno* 1559.

Juſtices of Peace to be active.

If (continues he) in the richeſt ſoil, the uſefulleſt and delightfulleſt Flowers, Shrubs and Fruits be planted, and no care be taken to weed out what would choak and over-grow them, what pleaſure or benefit could be had of all ones coſt and labour? a crop of weeds would ſoon ſuck out all the nouriſhment from their roots, over-ſhadow them from the cheriſhing Sun, and ſmother the curious Plants: ſo that they would ſoon dye and wither. Therefore is there a great need of chuſing able, careful and active Gardiners to howe and root out all ſuch rank Weeds.

The neceſſity of puniſhing evil Men.

In another (*u*) Speech (after adviſing great care in chuſing Officers, as Juſtices of Peace, *&c.* that have the Execution of the Laws) he tells the noble Aſſembly, That ſharp Laws ſhould be made for baniſhing ſloth and corruption, and adviſeth there ſhould be through the Kingdom Biennial or Triennial Viſitations of all the Temporal Officers and Miniſters, that ought to ſee to the Execution of the Law by Commiſſion, to try the Offences of thoſe that have not ſeen to the due Execution of the Laws, according to the Office and charge committed to them; as in Church-Viſitations: and that a Roll ſhould be kept, wherein all the Juſtices names ſhould be ſet down to every Offence he hath cauſed to be puniſhed, that it might appear who is diligent; and that thoſe that are negligent might be removed to their perpetual Ignominy, and ſuch pains ſet upon them as by Law may be. Another time (*w*) he urgeth, that it ought to be conſidered whether it be a greater Cruelty, to execute the Penal Laws, ſo as thereby a few ſhall be unwhipped, and many

(*u*) MS. Speech, ſecond Parl. 1562.

A Viſitation of the Juſtices of Peace propoſed.

See ſomething of this nature 2 *H.* 5. 8.

(*w*) MS. Speech, Star-chamber, 1568.

many hanged; or ſome ſhall be whipped, and thereby few hanged.

In another (*x*) I find this ſwaſive, It would be ſtrange to make Laws to reform manners, and prune away the ill branches, and Members of the Commonweal, and then to tye them in boxes and books; it were better to have no Laws, than them not Executed: for beſides other inconveniences, it breeds contempt of Laws and Law-makers.

(x) MS. Speech, ſecond Seſſion of Parliament, 1571.

(*y*) A Prince, continueth he, that is careful of the diſcharge of his great Office, leaveth nothing undone, meet for him to do, for the Execution of the Laws, making choice of Perſons of moſt Credit, and beſt underſtanding through the Kingdom, to whom for the great truſt he repoſeth in them, he giveth Authority by Commiſſion to Execute a great part of the Law: Therefore the Burthen of all Enormities, Abſurdities, and Miſchiefs that grow in the Commonwealth, for the not executing of Laws, muſt needs light upon thoſe Perſons that have Authority to execute them: and if remiſneſs be, if the Prince ſhould be driven to commit the Execution of the Laws to thoſe who in reſpect of Practice, and gain, would ſee them executed with all ſeverity, what a burthen would that bring to the Realm?

(y) *Idem.*

In this manner Queen *Elizabeth* cauſed the Execution of her Laws to be recommended both to the Juſtices of Aſſize, and to the Members of Parliament, that at their receſs they might take care to ſee them put in Execution.

As a cloſe to this Chapter, and an Introduction to the next, I ſhall give a ſhort account of the Laws in the *Saxons* time, that were made by ſeveral Kings for the preſervation of the Peace, and of how great value the due keeping of the Peace was. The Sixth Law of King *Ina* appoints, that he that fights in the Kings (*z*) Palace, ſhall loſe all his Goods, and it ſhall be at the Kings pleaſure whether he ſhall be Capitally puniſhed, or not: it alſo ordains ſeveral Mulcts of Money for fighting in the (*a*) Church, in an Aldermans Houſe, or the Houſe of a (*b*) Country-man. And the next Law is againſt Theft, and in the 13*th.* againſt Thieves, and Robbers, from the number of Seven, if they be 35 they are counted a (*c*) Troop, if more an (*d*) Army; and ſo in the 26*th.* Law appoints a Reward for apprehending (*e*) a Thief: So in the 46*th.* Law, of the Peace violated in (*f*) a Town of the Kings, or a Biſhops, 120 *s.* and ſo proportionable in the Town of an Alderman, of the Kings (*g*) Miniſter, or any Land-holders (*h*) Town.

(z) *Cuninges hus.*
(a) *Mynſter.*
(b) *Gefolgylden hus.*
(c) *Klothum.*
(d) *Herge.*
(e) *Theoffes onfeng.*
(f) *Burghbryce.*
(g) *Cyninges Thegnes.*
(h) *Land hebbendes.*

So in the 15*th.* Law of King *Alfred*, 150 *s.* puniſhment is laid upon him that (*i*) fights in the preſence of an Archbiſhop, and 100 if in the preſence of a Biſhop or Alderman; and in the next againſt the ſtealing a Mare or Cow, the price, and 40 *s.* Mulct, and in the 26*th.* againſt (*k*) Man-ſlaying in Companies, to pay the price of his Head, and all preſent 30 *s.* a piece; and in the 35*th.* againſt breaking the Peace in a Town as before.

(i) *De gefeohtum.*
(k) *Manſliht mid blothe.*

fore. The 38*th.* Chapter is long, That no Man assault his Enemy in his House till he hath (*l*) demanded right of him, which if he deny he may besiege him seven Days, but not (*m*) assault the House; and if he yield, he must keep him Thirty Days, and then restore him to his Friends. This care was taken to prevent Bloodshed. There are many particulars besides, worth observing in this, as well as the 40*th.* Chapter (*n*) against wounding.

(*l*) *Ærthon he him ribtes bidde.*
(*m*) *Be gefeohte.*
(*n*) *Be wundum.*

I shall speak of that of King *Edward* hereafter.

The first Law of King *Æthelstan* is against Theft, that is manifest, where the (*o*) thing stolen is found in the Thieves Hand; and so of other particulars worth reading.

(*o*) *The of the æt thæbhendse haud gefangen sy.*

The Third Law of King *Edmund* prohibits any Man-killer to come into the Prince's presence, altho' his Servant, till he have made satisfaction (*p*) for the Crime, as it is appointed him by the Bishop, and he makes Seven particular Laws together against Man-killing; those that assault other in Towns, holy places, *&c.* and the several punishments prefacing these Laws thus, That to him, and the Clergy and Laity met, it seemed most profitable, that love and mutual benevolence, through his whole Dominion should be cherished; for it was (*q*) irksom to them all that there should be unjust fighting among Christians; and begins the Seventh Law thus, It is the part (*r*) of the prudent to extinguish Capital Enmities.

(*p*) *Æf he on dædbote ga: swa Bisceop him Tæce, & his scrift him wisige.*
(*q*) *Et us eallum tha unrihtlican, & menigfealdan gefeohte the betwux us sylfum syndon.*
(*r*) *Witan scylon fæhthe settan.*

For the better preservation of Peace, King *Æthelred* appointed that every (*s*) Freeman have sureties that if he be called in question for any Crime, these Sureties may do justice to each one, that is, satisfie for the offender, the Title of which is, *Be Borgum.* In the Law, the duty of these Sureties is described at large; and it appears by other Laws in after times, that Nine Men were bound for every Tenth Man.

(*s*) *That ælc freoman getreowne borh hebbe.*

Whoever desires further satisfaction in this particular, may consult the 19*th.* Law of *Canutus*, wherein he appoints (*t*), that every Free-man enter himself into an Hundred, or into the Colleguelhip of the Ten. In other matters of preserving Peace, they may consult the Second, the Eighth, and Twelfth Laws of the same *Canutus*; the which Eighth Law is thus expressed, Peace is so to be considered, as that nothing can be more desirable than it to the Inhabitants, and nothing more contrarily is offensive as Thieves, which in the Saxon is thus, *Swa ymbe frythesbote. Swathan hundan si selost & tham Theoffon sy lathost, & swa ymb Heosbote.*

(*t*) *Et we willath, that ælc freoman beo on hundrede, & on Teothung gebroht,* viz. *the Tything security.*

Having met with a passage in the Laws of King (*u*) *Ethelstan*, which both illustrates the Care of the King, to have the Peace preserved; and likewise shews the readiness (according to their duty) of the Subjects to assist the King with their Persons and Estates: I thought it not amiss to insert it as a Close to this Chapter, and an Introduction to the next.

(*u*) *LL. Æthelstani, fol.* 53.

The words (as to be rendred from the Saxon, and the Latin Version of Mr. *Lambard*) run thus, I *Æthelstan* King, do to all clearly

clearly ſignifie [*Cyth*] that I have diligently enquired the Cauſe wherefore our (*w*) Peace was not kept as I deſired, and at *Grantelee* it was appointed; and I received this Anſwer from (*a*) my Wiſe Men, that it happened by my (*b*) forbearance; *i.e.* too much lenity in not puniſhing now of late, when I ſtaid at *Exceter* in the (*c*) Feaſt of the Nativity of our Lord, attended by my Wiſe Men, I found (*d*) them almoſt ready themſelves, with their Heirs, with their Wives and all their Eſtates, to go thither, whither I will, and will purge out, or expel thoſe Outlaws, *i. e.* breakers of the Peace, that are againſt this, in ſuch order, or with ſuch wiſdom and conſideration, that they never after come on the Earth again, *i.e.* that they be baniſhed. The Saxon of the latter part is thus, *Bretan hi offer this geſwican willan, on tha gerade the heo næfre æft on ſorda ne cumen*; which Mr. *Lambard* tranſlates thus, *Ut iſti tandem pacis violatores Regno haud unquam redituri pellerentur.*

Then it further is added, And if theſe Men (*e*) hereafter in theſe Lands be met with, or found, that they ſhall be ſo guilty as they are that are found *hand having*; that is Stealing; which Mr. *Lambard* renders, *Ac ſi eorum aliquis poſtea in Regno deprehenderetur, pariter ac qui eſt in furto manifeſte deprehenſus plecteretur.*

From all which we may obſerve, That the Counſel of the *Witan*, Nobles, and Wiſe Men, was at one of the times the King kept them in courſe: *viz.* at Chriſtmas, called here *Mid-winter*. Secondly, That the King asks the Members of the Council their advice. Thirdly, They tell him, that it happened, that his Peace was not kept, becauſe of his forbearance in not putting the Laws in Execution, that were eſtabliſhed at *Grantelee*. From whence we may obſerve, that the King was to put theſe in Execution, and that his Remiſneſs, Clemency, or Indulgence increaſed the numbers of the breakers of the Peace. Fourthly, That for the ſuppreſſing of theſe breakers of the Peace, the Nobles who met in Council at *Exceter*, promiſe they will be in readineſs provided, themſelves and their whole Families, and all things they have, *to færenne*, that is, from *fær*, to go forth in Expedition Armed, as the King will appoint; the ſignification of which word I have found in ſeveral Letters about the Wars betwixt *England* and *Scotland* in *Henry* the Eighth's and *Edward* the Sixth's time, where when any conſiderable party of the *Scots* made an inrode into *England*, to ſeize upon Men, burn Towns, or Houſes, or carry away Cattel, it was called running a Forray. Fifthly, We may note, that this ſhews that the Militia of the Subjects was at the Kings diſpoſal to go whither then the King will; which ſaves me a labour in the following Chapter to deduce the Kings Power over the Militia higher, though I doubt not but a little looking into the *Saxon* Laws would afford me more Precedents, as the Fifty ninth Law of *William the* (*f*) *Conqueror* doth expreſly; as before I have touched on another occaſion, but here think fit

(*w*) *Vre fryth is wyrs gehealden thonne we lyſt.*

(*a*) *Et mine witan ſeigath.*

(*b*) *That Ic hit to long forboren hæbbe.*

(*c*) *Middum wintre.*

(*d*) *That tha ealle ſyn gearwe mid hire ſylfum & midyfre* (which I interpret *Heirs*, it ſignifying *Heritage*; and though miſ-placed in *Lambard*, is by him tranſlated *Children*) *& mid wife & mid eallum thingum* (by *Lambard* tranſlated properly *all their Fortunes*) *to færenne thider thider Ic thonne will.*

(*e*) *And gif hi mon æfre æft on thæm eorda gemit, that hi ſyn ſwa ſcildig, ſwa ſe the æt hebbendra handa gefongen ſyn.*

(*f*) *Statuimus etiam & firmiter præcipimus, ut omnes liberi homines totius Regni noſtri prædicti, ſint fœdere conjurati ad Monarchiam noſtram, & ad Regnum noſtrum pro viribus ſuis & facultatibus contra inimicos pro poſſe ſuo defendendum, & viriliter ſervandum; & Pacem & Dignitatem Coronæ noſtræ integram obſervandam; & ad Judicium rectum, & Juſticiam conſtanter omnibus modis pro poſſe ſuo ſine dolo & ſine dilatione faciendam.* LL. Gul. 1. 59. fol. 171. Edit. Wheeloch.

fit to recite it at length, *viz.* The King appoints, and firmly commands all the Free-men of his Kingdom, that they be ſworn Brothers, to their Power to defend, and manfully to keep his Monarchy, and his Kingdom according to their might and Eſtates againſt Enemies, and to obſerve or maintain the Peace and Dignity of his Crown entire; and without delay, without deceit to do right Judgment and Juſtice conſtantly, all manner of ways, according to their Power. So that here we find theſe *liberi Homines*, Conſervators of the Peace alſo, which I ſuppoſe was incumbent on them, as well as they were Lords of Mannors, where they had their Courts, as likewiſe they were Hundredaries, *&c.*

CHAP. XXXV.

Of the Kings Soveraignty in making War and Peace.

(a) Διόπερ καὶ παύτην τὴν πολιτείαν, κυριώτατον τὸ περὶ πολεμῶν, καὶ μετέχουσιν αὐτῆς οἱ κεκτημένοι τὰ ὅπλα. 3. *Polit. c.* 7.

THE great (*a*) Philoſopher obſerves, That in a Commonwealth, that part is moſt powerful in which the ſtrength of War conſiſts, and which is in poſſeſſion of Arms; for thoſe, he ſaith, that have no Arms, are the Servants of the Armed.

(b) Ἐάν τις ἰδίᾳ ποῆσαι πρός τινας εἰρήνην ἢ πόλεμον, ἄνευ τῆς κοινῆς, θανάτῳ ἔστω ζημία. 12. *de LL.*

Plato (*b*) affirms it as a ſtanding Law, That he, who without Authority, innovates a Peace, or makes War, ſhall be adjudged to puniſhment; and gives this reaſon for it, That he who hath in his Hand the Militia, it is in his Power that the Commonwealth ſubſiſt, or be diſſolved.

Power of making War and Peace the greateſt Badge of Sovereignty.

Bodin makes this one of the greateſt badges of Soveraignty; becauſe, without the power of declaring War, and making Peace, no Prince can defend himſelf or his Subjects, the Eſtabliſhment, or Deſtructon of the States depending upon it: therefore it is Capital to do the leaſt thing in that kind without the Kings Commiſſion. There being nothing more dangerous in War, than to betray Counſels, it is not fit the ordering of War, and conſequently of Peace, ſhould be in any but the Soveraign.

(*c*) *Clapmarius de Jure Majeſtatis, lib.* 1. *c.* 10.

In the Greek and (*c*) Latin Hiſtories it appears, that all Wars were undertaken, and performed by the Counſel, Will, and Pleaſure of the Soveraign, whether Senate, or Emperor, and by them ſolely was decreed, unleſs in ſome extraordinary Caſes, that the Peoples conſent was required *in comitiis Populi centuriatis*; and when the Republick was changed by the *Julian* Law, it was Treaſon to make War without the Command of the Prince; the words of the Law being, *Nulli, nobis inſciis, atque inconſultis, quorumlibet armorum movendorum copia tribuetur.*

The reaſons why this Power ſhould be in the Soveraign ſolely, are many, and juſt; for without it no Prince can provide againſt

gainſt inteſtine Seditions. For if he wanted that Authority, as often as Ambitious or Seditious Men perſwade the People they were in danger of Oppreſſion by the Government, or they had a mind to remove great Officers that they might enjoy their places; or that the Rule in Church or State did not pleaſe them; They might reſort to Arms, to the ruining of their fellow Subjects, who would otherwiſe live peaceably and dutifully. By this liberty, greateſt Convulſions would be in the Kingdom upon every predominancy of ill humours, and we ſhould never be without the Plague of War in one place or other, and all the miſeries of a torn, diſ-joynted and mangled confuſion would be upon us; neither ſhould a Prince be able to defend his Subjects from Foreign Invaſions, or perform that great and neceſſary Work of aſſiſting the Allies to his State, and be formidable to his Enemies.

Reaſons why this Power ſhould be in the Sovereign alone to make War and Peace.

Polybius (*d*) notes, That there are two things which preſerve Government, *viz.* Fortitude againſt Enemies, and Concord at home; but neither of theſe can be performed, if the Prince have not the diſpoſal of the Militia. This is it which preſerves the Kings Authority, makes his Laws to be obſerved, keeps the Factious and Seditious at quiet, gives repute abroad, and Peace at home.

(*d*) Δυοῖν γὰρ ὄντων δι' ὧν σώζεται πολίτευμα πᾶν, τῆς πρὸς τὺς πολεμίους ἀνδρείας, τῆς πρὸς σφὰς αὐτὺς ὁμονοίας. *Polyb.* 6.

All the Calamities of War are prevented, when an Armed Prince, that hath the ſole diſpoſal of his Military Power, can extinguiſh the Flame at its firſt blaze; therefore St. (*e*) *Auſtin* ſaith, That the natural order of Mortals, accommodated to Peace, requires this, That the Authority and Counſel of making War be in the Prince.

(*e*) *Ordo naturalis mortalium paci accommodatus, hoc poſcit, ut ſuſcipiendi belli auctoritas, atque conſilium penes Principes ſit.* Auguſtinus contra Fauſtum.

That in the time of the *Saxon* Kings, the Power of the Militia was in the Crown, doth not obſcurely appear in all the Laws for preſerving the Peace, and in that particularly I have inſtanced in of King *Æthelſtan*; beſides which, we find the Tenth Law of King *Canutus* ordained, That Fenced Towns, or Burghs and Bridges be repaired, and there be preparations for defence both of Land and Sea-Forces, ſo often as the neceſſity of the Commonweal requires it.

Burgbote & Brigbote beonon forth & ſcip forthunga aginne man georne & frythunga eac ſwa a thone thearf ſy for ge men licre neode. LL. Canute 10.

The 69*th.* Chapter of *Hereots* runs thus, Every Earl to pay Eight Horſes, whereof four with Saddles, and four without Saddles; four Helmets, and ſo many Coats of Mail; eight Spears and eight Shields, four Swords, and twelve *Mancuſæ* of Gold: and a principal Thane, half the number, and other Thanes a leſſer proportion, as may be there ſeen: By which there ſeemeth ſome beginning of a Feudal Tenure, which in *William the Conqueror's* time was ſo ſettled, that (as elſewhere I have noted) all Perſons held of him their Lands in Knights Service, to be ready at his pleaſure with Horſe, Men, and Arms; the which was practiſed in ſucceeding Ages.

The Statute 30. *Octob.* 7 *E.* 1. ſaith, That it being accorded of late, that in our next Parliament, Proviſion ſhould be made, that in all Parliaments, Treaties, and other Aſſemblies which ſhould

ſhould be made in the Realm of *England* for ever, that every man ſhall come without all Forces, and Armors, peaceably to the Honour of us, and the Peace of us and our Realm. Now all Prelates, Earls, *&c.* have ſaid, that to us it belongeth, and our part is through our Royal Signiory to * defend force of Arms, and all other force againſt our Peace at all times, when it ſhall pleaſe us; and to puniſh them which ſhall do contrary, according to our Laws, and uſages of our Realm: and hereunto they are bound to aid us their Soveraign Lord at all ſeaſons.

* *i. e.* forbid.

In 3 *Ed.* 3. (*f*) the Commons decline the having Cognizance of ſuch matters, as guarding the Seas, and Marches of *England*, but refer it wholly to the King; and 25 *E.* 3. it is High Treaſon to levy War againſt the King, or aid them that do it. Alſo the Statute of (*g*) *H.* 7. ſaith, Every Subject by duty of his Allegiance is to ſerve and aſſiſt his Prince and Soveraign Lord, at all ſeaſons when need ſhall require.

(*f*) *Cap.* 2.

(*g*) 11 *H.* 7. *c.* 18.

There is nothing more indiſputably owned by all that underſtand the Laws, than that it was High Treaſon by the Common Law, before the Statute of 25 *E.* 3. for any Subject to levy War within the Realm, without Authority from the King; it being one of the Rights of Majeſty, Badges of Supreme Power, and incommunicable Prerogatives of the Crown, ſaith my Lord * *Coke*, and with him conſent all the long Robe.

* 3 *Inſtit. c.* 9.

In a Speech in the Star-Chamber to the Juſtices in Queen *Elizabeth*'s time, the Chancellor tells them that the Queen had levied Forces, and Reaſon willeth, and the obedience of good Subjects requireth, that all things that the Prince commandeth for defence of the State, ſhould by the Subjects diligently, and obediently be performed for dutys ſake, either not examining the cauſe, or preſuming the beſt cauſe; but at that time ſhe was pleaſed to ſignifie the cauſe of her doings.

As to the King of *England*'s making War, and Peace abroad, it hath always been owned as the King's ſole Prerogative; and when ſome Parliaments have addreſſed to our Kings, to make War or Peace, contrary to what the Soveraign judged convenient, they have been advertiſed of their Duties: yet when War is to be made in remote Countries, which cannot be performed without great Expence, much time, and the exhauſting of the Kingdoms Forces, That the People may more chearfully ſerve their Prince and Country, and that the Exchequer may not be too much diminiſhed, whereby the uſual Charges of the Government may not be ſubſtracted; Kings have upon good Reaſon, propoſed the Matter to their Parliaments, whereby neceſſary Aids might be ſufficiently ſupplied.

The Laws now in force concerning the Militia, are, That the (*k*) King hath the Prerogative alone, to diſpoſe of the Militia of the Nation, to make War and Peace, Leagues and Truces, to grant Safe-Conduct, without the Parliament; and he may iſſue out Commiſſions of Lieutenancy, impowering them to

(*k*) 13 *Car.* 2. *c.* 6. 14 *Car.* 2. *c.* 3.

to form into Regiments, to lead them, and employ them as well within their own, as other Countries, as the King ſhall direct, to ſuppreſs Inſurrections, Rebellions, and Invaſions.

He hath the Command of all the Forts, and places of Strength, and alone to have the keeping and Command of the Magazins of Arms, he alone to give Letters of Mark and Reprizal, in times of War, to give Safe-Conduct for Merchants, to make a ſtop of Trades as he ſees cauſe. In the time of danger, and for defence of the (*l*) Realm, may command all his Subjects to Arm, and they are to aſſiſt him, and for this the Commiſſion of Array may be made uſe of, and all the Courts of Officers of War in a time of War, are his Prerogative, and the Subjects are to ſerve the King within the Kingdom, againſt Rebels, and Traytors, (*m*) without Pay or Wages; and this as it ſeems, in any part of the Nation, eſpecially if the King go himſelf.

(*l*) *Coke* 7. 25.

(*m*) *Jenkins Cent.* 8. *Caſe* 14. 26. 89.

The Subject (except in an extraordinary (*n*) Caſe) is not to be forced out of the Realm, unleſs it be to go with the Kings Perſon; nor in any caſe, unleſs upon the ſudden Invaſion or Aſſault of an Enemy, to ſerve the King without wages: and the King in time of War may take any mans (*o*) Houſe to build a Fort, or make a Bulwark upon any mans Land. But the King may not rate the Nation to pay any money towards any War of his.

(*n*) *Coke* 7. 8.

(*o*) 1 *E.* 3. *Stat.* 1. 2 *Eliz. c.* 2.

It is true in time of Peace the King cannot quarter his Military Forces without the conſent of the reſpective Subjects, nor raiſe money without Act of Parliament, for the maintenance of any Army: ſo that the Subject (while they keep dutiful) are in no danger of oppreſſion by ſuch a Power; yet without a competent Standing Force, and Guard, at the Kings abſolute pleaſure, what *Livy* ſaith of the Senate, would be moſt true of all Soveraigns, That if the Forces were diſmiſſed, unlawful Aſſemblies, and covert Conſpiracies would be again ſet on foot.

Some Standing Forces neceſſary.

(*p*) *Timor inde Patres inceſſit, ac ſi dimiſſus exercitus foret, rurſus cœtus, occultæque conjurationes fierent.* Lib. 6.

The longeſt lived miſchievous Parliament, that any *Engliſh* Hiſtory can record, knowing that they could not effect their deſigns of weakning the King without the Power of the Militia (though they had a numerous Party prepared to eſpouſe their Intereſt, and as ready for Rebellion as they could deſire) yet that they might have ſome colour for juſtifying their proceedings, pretended neceſſity of putting the Kingdom into a poſture of defence, againſt foreign Invaſions (which by ſubtile Plots, they poſſeſſed the people they had Intelligence of) and for fear of any violence to be offered to themſelves, or that the King ſeduced by evil Counſellors, ſhould ſet up Arbitrary Power: ſo having obtained that Fatal Act of not being to be diſſolved without their own conſent, iſſued out their Commiſſions for Levying, Trayning, and Exerciſing Forces in all Counties, where they had power, by no Law, or colour of Law, but that of pretended imminent danger, wherein the King refuſed to grant Commiſſions to ſuch as they could conſide

The Long Parliaments Claim of the Militia.

in for their aforeſaid purpoſes. All which was but colour and ſhew to wreſt the Power out of the Kings hands.

The Claims of any Right of the Two Houſes to the Militia, totally vacated.

To obviate ſuch like miſchievous practices for the future, upon his Majeſtys happy Reſtauration, it was enacted, and declared, That the ſole ſupreme Government, Command, and diſpoſition of the Militia, and all Forces by Sea and Land, and of all places of ſtrength, *&c.* is, and by the Law of *England* ever was the undoubted right of his Majeſty, and his Royal Predeceſſors Kings and Queens of *England*, and that both, or either of the Houſes of Parliament, cannot, nor ought to pretend to the ſame, nor can or lawfully may raiſe, or levy War, offenſive or defenſive, againſt his Majeſty his Heirs and lawful Succeſſors.

So that now that great Controverſy which wasſ o violently diſputed to the loſs of ſo much Engliſh Blood and Treaſure; is I hope eternally determined, never again to be revived without an horrid proſperous Rebellion: and this Prerogative of the Crown being thus guarded by Law, will never more be attacked while the Royal line continues; which is to be hoped, and wiſhed, will without interruption, be prolonged while the *Britiſh* Soil exiſts.

CHAP. XXXVI.

Concerning raiſing of Money upon the Subject, and the obligation of Subjects to ſupply the Soveraign.

AS to the raiſing of Money for the ſupport of Government, I have diſcourſed ſomething in the Title of Property, and ſhall here only treat of the neceſſity in all Government, That the Soveraign be plentifully ſupplyed with a Revenue ſuitable to the charge.

The neceſſity of Tributes and Aids.

Although *Darius* the *Perſian* be reckoned by *Herodotus* one of the firſt that exacted Tribute; yet it cannot be conceived but that ever ſince there was a Prince who commanded large Countrys, and had potent Neighbours, Tribute, Aid, and ſuch like proviſion was exacted of the people for the defraying the neceſſary charges of it. So *Tacitus* (*a*) tells us, That we may be preſerved in Peace, Arms are neceſſary, and they cannot be provided for without Taxes.

(*a*) *Nec enim quies gentium ſine armis, nec arma ſine ſtipendiis, nec ſtipendia ſine tributis.* 4. Hiſt.

The Subjects receive the benefit of protection, and by the care of the Government, peaceable poſſeſſion of their Houſes, Fields and Cattle, Liberty of Trade, diſpenſation of Juſtice, and other great Emoluments by its guard and vigilance; which require a numerous retinue of Officers of State, Juſtice, and War, and Multitude of ſubordinate Miniſters. Something alſo

muſt

muſt be allowed for the grandeur and port is neceſſary for the regulating it at home and abroad, the maintaining Correſpondence by Ambaſſadors, the providing for defence againſt foreign Invaſions, and preſerving Tranquillity at home; in all which the Publick is concerned: therefore the reaſon is very juſt, and equitable, that beſides a ſtanding Revenue for defraying theſe conſtant charges, there ſhould be ſubſidiary ſupplys upon emergencies, adequate to the occaſions. As *Cicero* juſtly admoniſheth, *Da operam ut omnes intelligant ſi ſalvi eſſe volunt, neceſſitati eſſe parendum*: That the Subjects be made to underſtand, that if they will be ſafe, they muſt yield to neceſſity this abſolute neceſſity of parting with a portion of their Eſtates, for ſecuring the reſt. For though it be prudence in a private man, juſtly, and moderately to enrich himſelf; yet craftily to withhold from the Publick, and to defraud it of ſuch parts of the Wealth, as is by Law required, is no ſign of prudence (ſaith Mr. *Hobs* as judiciouſly as any poſition he lyes down:) but want of knowledge of what is neceſſary, for their own defence, and covetouſneſs to part with nothing they can hold, makes this reſtive humour in many.

As the Subject is protected, ſo he ought to ſupport the Government.

Civil War.

That the Kings of *England* have quitted that Soveraign badge of raiſing money upon the Subject, by their own Impoſitions, without conſent of Parliament, is manifeſt ſince *Edward* the Firſt's time. (*b*) The Act for which runs thus, For ſo much as divers People of our Realm are in fear, that the Aids and Tasks, which they have given us before time, towards our Wars, and other buſineſs, of their own grant and good will (howſoever they were made) might turn to a Bondage to them and their Heirs, becauſe they might be at another time found in the Rolls, and likewiſe for the prices taken throughout the Realm by our Miniſters: We have granted for us and our Heirs, that we ſhall not draw ſuch Aids, Task nor Prices into a Cuſtom, for any thing that hath been done heretofore, be it by Roll or any other Precedent that may be found. (*c*) The next is thus; Moreover we have granted for us and our Heirs, as well to Archbiſhops, Biſhops, Abbats, Priors, and other folk of Holy Church, as alſo to Earls, Barons, and to all the Commonalty of the Land; that for no buſineſs from henceforth, we ſhall take ſuch manner of Aids, Tasks, nor Prices, but by the common aſſent of the Realm, and for the common profit thereof, ſaving the ancient Aids and Prices due and accuſtomed.

(*b*) 27 *E.* 1. *c.* 5. *Anno* 1299.

(*c*) *Cap.* 6.

See for this the Charter of King *John.*

Theſe being not fully enough expreſſed, the Statute of 34 *E.* 1. though as ſhort in words as any to be found, yet is of the largeſt extent, and as liberal a Boon of Royal bounty, as any People can boaſt of from their Prince. It is thus, No Tallage or Aid ſhall be taken or levied by Us, or our Heirs in our Realm, without the good will and aſſent of Archbiſhops, Biſhops, Earls, Barons, Knights, Burgeſſes, and other Free-men of the Land. Therefore all thoſe who would enjoy the benefit of this Law, muſt take care they preſerve the Succeſſion and the two Houſes of Parliament.

(*d*) MS. Speech, ſecond Parl. *Eliz. An.* 1562. Inducements to ſupply the Sovereign.

(*d*) The Lord Chancellor in Queen *Elizabeth*'s time, thus by the Queens command diſcourſeth to the Houſes, If when any part of the natural Body hap to be in danger, the Head and every part haſteth to the relief; ſo how inconvenient and unnatural is it, when danger is offered to the whole, that the Head ſhould take the whole care, and bear the whole burthen, and the Members remain uncareful and uncharged.

(*e*) *Coke Inſtit.* 1.90.

It is certain (*e*) the Prince can make no War of any great concernment, without the aſſiſtance of his Subjects Purſes as well as Bodies, unleſs all would voluntarily ſerve upon their own charges: for that neither ſudden dangers can be evaded, nor Forces raiſed, and all things neceſſary for them provided, nor peace be long preſerved, when the Prince hath an empty Exchequer; for Treaſure is *Firmamentum Belli, & Ornamentum Pacis.*

(*f*) States of *France.* Objection.

A late (*f*) *French* Author, concerning his own Country, makes this objection, That Princes having aſſigned for their uſual charges of the Government, Tribute and other Incomes, they ought to be therewith contented, and not without occaſion raiſe new Taxes to the detriment of the Liege people, and contrary to the intention of the Truſt: Yet he owns this ought to be ſoberly underſtood; for a wiſe Phyſician applies thoſe Remedies neceſſary without the Patient's leave, and will force him, though by cutting off a Limb, to ſave his life. So when there may happen a neceſſity, urgent and unforeſeen, that either will ſuffer no delay, or which ought not for ſome time to be divulged; in ſuch caſes (ſaith he) the King without the States, and whether they will or no, may lay new Impoſitions, and make all other neceſſary proviſions, by the abſolute Power he hath to rule, and preſerve his State and Subjects, he not being able to defend them without neceſſary Forces: Therefore in ſuch occaſions it is to be ſuppoſed, that with the Power of Government, there is transferred to the Prince the Power to do that, without which good Government cannot be executed; but when there is not that kind of neceſſity, the States are called. Thus far my Author.

(*g*) *Coke* 1. *Inſtit. p.* 161.

Since therefore (*g*) *qui diruit medium, deſtruit finem*, he that takes away the neceſſary means, for a King to preſerve his people in uncommon events, hazards the ruine of the People; ſome have inferred that when dangers ſhould be ſo ſudden, that there could not be time to convene a Parliament, or that ſuch a Parliament met, ſhould for ſome deſign, deny the Prince Money, then the Kings Prerogative might extend to the raiſing of Money; and they inſtance in the Loans by Privy Seals, exacted upon the Subjects even in Queen *Elizabeth*'s time.

Concerning Ship-Money.

This indeed was the Plea for Ship-money, and as the caſe was ſtated by King *Charles* the Firſt, all the Judges once ſubſcribed their affirmative opinions (though Mr. Juſtice *Hutton* and *Crooke* retracted after) and with great learning the caſe was argued, and Judgment given in favour of the King: Yet he hoping, by the yielding to the aboliſhing of it, to have ſtopped the miſery of

of a War, conſented to an Act for that purpoſe; yet that prevented not the Inundation of blood: and we found thoſe men, that moved Heaven and Earth with their clamours againſt the King, as governing arbitrarily; when they got the Power, made it their dayly practice, to lay what unprecedented illegal Taxes they pleaſed on their fellow Subjects, to the value, as ſome compute, of Forty Eight Millions.

The Advantages to Prince and People, when the Crown is liberally provided for.

Therefore all Judicious perſons, lovers of their King, Country and Poſterity, finding the ſad effects thoſe diſputes brought to the Bleſſed King and the whole Kingdom, will think it a neceſſary prudence in a Prince, to have always ſuch a proviſion of Money ready, as will enable him in all difficulties, that may occur in the Adminiſtration of the Government, without being obliged to part with any of his Royal Prerogatives, when any diſcontented or deſigning Factious Members ſhall be able to take advantage of his Wants, whereby to drive their barter with the Crown; for thereby he ſhall defeat their ends. On the other ſide it will be the moſt prudent and dutiful courſe both for their own ſecurity, and the Princes honour, for Parliaments upon all juſt and honourable Wars, or occaſions of aſſiſting Allies, preparing Fleets in readineſs, upon neceſſary defence, to aſſiſt the Prince liberally, and repay out of the Publick, what for publick Service he hath expended out of his own Revenue, rather than he ſhould be in diſeſteem with his Neighbours and Allies; whereby the honour of the Prince, and conſequently of his Subjects, ſhould be Eclipſed, or he be neceſſitated to take any unuſual courſe for raiſing Money, or be compelled to make any inglorious Peace: for we can never forget, how the want of ſupplies to King *Charles* the Firſt, brought not only Ship-money, and Knight-hood-mony, Monopolies, and the long diſuſe of Parliaments, but at laſt that moſt calamitous War upon the whole Nation.

Decemb. 17. 1680. The Care of ſome Parliaments to keep the King poor.

We cannot forget how zealous an Houſe of Commons was of late to prevent any Arbitrarineſs, as it was inſinuated, in the late King, ſo that they voted a Bill to be brought in againſt illegal Exaction of Money upon the People, under the Penalty of Treaſon, not foreſeeing that the Charters of the City of *London*, and many other Corporations, were forfeitable upon that account; which if it had been made Treaſon, the King had got a good Revenue, againſt the intentions of thoſe who in all appearance voted for a contrary end: which further appeared in their Vote *Jan.* the 7*th* following (*h*), That whoſoever ſhould lend, or cauſe to be lent, by way of advance, any Money upon the branches of the Kings Revenue, ariſing by Cuſtoms, Exciſe or Hearth-money, (the three principal branches) ſhould be judged to hinder the ſitting of Parliament, and be reſponſible for the ſame in Parliament. So that they would give nothing themſelves, but as much as in them lay, terrified others from lending, or advancing any Money to him; which was not according to their Writ, to adviſe, but by dureſs and

(*h*) Addreſs, *part* 3.

and force to compel the King to ſubmit to their Judgments: and inſtead of giving him Aſſiſtance to ſupport his Allies, and enable him to preſerve *Tangier*, they tended to the diſenabling him from contributing to either by his own Revenue and Credit; not only expoſing him to the dangers that might happen either at home or abroad, but endeavouring to deprive him of the Poſſibility of ſupporting the Government it ſelf, and reduce him to a more helpleſs Condition than the meaneſt of his Subjects, as the King ſadly and juſtly complained; and in that Vote the Subjects Liberty and Property was invaded, in that he could not diſpoſe of his Money to his own Profit, and the Benefit of the Government, if either Inſurrection or Rebellion happened in the interval of Parliament, or a foreign Force on a ſudden ſhould attacque us: yet theſe Gentlemen would be counted Loyal and Dutiful Subjects.

It is not to be denyed, but that if a Prince's ſtanding Revenue were ſo great, that by it he might not only ſupport the ordinary expences of the Government, but lay by a ſumm ſufficient to defray all extraordinary incident Charges, either occaſioned by inteſtine Rebellions, or foreign Invaſions; that a King ſhould not have occaſion to have ſo often recourſe to Parliaments for Aids.

Yet when we conſider, that there would be many other occaſions of frequent convening that great Council, for making wholeſom Laws, which is one great Portion of their Buſineſs; and that the Subjects never can be happy under a poor Prince, who thereby ſhould be brought into contempt, and how much greater miſchiefs accrue to the Subjects, by rendring their Prince impotent, and unable to preſerve them from factious diſturbers of their Peace and Repoſe, and the preſerving their Properties, as well as the defending them from the deſigns of foreign Princes who would injure our Merchants, lock us in our Iſland, and force us to ſell our own native Commodities, and receive theirs at what Rates they pleaſed, if our Soveraign were not able to keep a ſufficient Fleet, and infinite other Miſchiefs, which would accompany a ſtarved Exchequer; we ſhould too late find that the Expence of many Millions would not again reſtore us to that condition of Proſperity and Renown, that one, timely beſtowed on our Prince, would preſerve us in. It is much leſs Charge to keep in good Repair, a well-built Fort, Caſtle, or Man of War, than to build a new one, eſpecially if, upon the demoliſhing of the old, we were to fight for the Ground and Materials, whereupon and wherewith we ſhould build the new.

It is a ſingular Security to the *Engliſh* Subject, that no Money can be levied upon him, but by Act of Parliament, to which in his Repreſentatives he gives his Conſent: and the Houſe of Commons is generally careful that they underſtand a great neceſſity, ere they paſs any Money-bill; yet we have known in our Age ſome, that have ſtood upon ſuch terms with their Sovereig n

reign, that either he hath choſen rather to want Supplies, than have them upon ſuch hard Terms, or their Principals have ſuffered a thouſand times more by ſuch denials, than they had done if they had been granted.

So was *Conſtantinople* loſt to the *Turks*, for want of furniſhing the Emperor with the hundredth part ofthat which the victorious Enemy plundered the Citizens of; and ſo the Count Palatine, elected King of *Bohemia*, loſt that Kingdom, and all his Hereditary Seigniories, by unfurniſhing his Soldiers with preſent Pay, when he had it by him. And how many ſuffer by the want of a liberal and proportionable Supply, to pay off the Debts of the Exchequer, is too ſadly felt by many; and if the Parliament of 1639. had furniſhed King *Charles* the Firſt with twelve Subſidies (as it appears by the ſequel,) the Expence of four times as many Millions, beſides the infinite quantity of Chriſtian Blood ſhed in the enſuing War, had been prevented in all humane probability.

Therefore it is to be hoped that both Parliaments will be careful to ſupply the wants of the Crown; and Princes will for the future, be as careful ſo to imploy the Monies given, that they may encourage their Subjects (as often as the urgency of Affairs may require it) to give freely what may be uſeful, and ſufficient for their Kings urgent occaſions.

(*i*) It is noted by *Tacitus*, that *Nero* coming to the Empire, told the Senate that he being not brought up in Civil Wars, or domeſtical diſcords, would bring with him neither hatred nor grudge, nor deſire of Revenge, and promiſed them many good things, which were very acceptable (*k*) to the Senate and People; but doubting with himſelf whether it were beſt to command that no more Subſidies or Tributes ſhould be levied, but he ſhould beſtow ſo fair a Donative on the World; though this commended the Bounteouſneſs of his Mind; yet the Lords of the Senate ſtayed him from ſuch a Reſolution, telling him, It would be the Diſſolution of the Empire, if the Revenues, by which it was ſuſtained, ſhould be diminiſhed.

(*i*) *Nec juventam armis civilibus aut domeſticis diſcordiis imbutam, nulla odia, nullas injurias nec cupidinis ultionem afferre.* 13. Annal. c. 1.

(*k*) *An cuncta vectigalia omitti juberet: Idque pulcherrimum donum generi mortalium daret. Sed impetum ejus, multum prius laudata animi magnitudine, attenuere Senatores, diſſolutionem Imperii docendo, ſi fructus quibus Reſpublica ſuſtineretur; diminuerentur.* Lib. 13. c. 12.

Theſe, and ſuch Conſiderations, that ever to be Renowned Houſe of Commons, convened 23 *May*, 1685. have had, and with an unaccuſtomed ſpeed, ſupplied the King plentifully; which was a moſt effectual means to ſtifle the Rebellion of the late Duke of *Monmouth*, and the Earl of *Argile*: and ſuch chearful Aids will render his Majeſty able to purſue his moſt Princely Deſign, not only of making the *Engliſh* Name more conſidered and reſpected abroad; but of carrying the Reputation of it yet higher in the World, than it has been in the time of many of his Royal Anceſtors.

The King's Speech, 30 *May*, 1685.

Which induced the moſt wiſe King to tell them, That the readineſs and chearfulneſs that attended the diſpatch of it, was as acceptable to him as the Bill it ſelf; and that he would not call upon them for Supplies, but when they ſhould be of publick uſe and advantage; and that he would manage what they gave,

gave, with good Husbandry, and take care to employ them to the uſes for which he asked them.

So long as ſuch a conſiderately liberal Mind continueth in the two Houſes, and the Money is lodged in the Exchequer of ſuch a Prince, we may preſage a moſt happy time, and neither fear inteſtine Rebellions, nor foreign Enemies; and beſides the unſpeakable Benefits to our ſelves, the advantage muſt redound to his Majeſties Allies, and the general Repoſe of Chriſtendom may depend much upon it: there being little doubt to be made, but if our late Sovereign of Bleſſed Memory, had been ſeaſonably and effectually ſupplied, the Lilies of *France* had not been ſo rankly planted and ſecured in *Flanders*, nor been watered with ſo much Chriſtian Blood; nor probably had we at home been in ſo imminent a danger of a Civil War, as we were by the ſubtile Devices of thoſe who knew that the Royal Eagle could make no extraordinary flight, when his Golden Pinions were ſhortned.

CHAP. XXXVII.

Of the Nobility.

HAving hitherto treated of the Excellency of Government, and particularly of that of *England*, and the juſt and beneficial Soveraignty of the Prince, under ſeveral Heads; Method requires that I ſpeak ſomething of the Subjects, who they are, and their Duties; and laſtly of the cauſes of Diſturbance, or Diſſolution of Government, by Faction, Sedition, Conſpiracy and Rebellion: of which in order, and firſt of the Nobility, as thoſe who juſtly make the greateſt Figure in the Government, next to the Royal Lineage.

Several kinds of Nobility.

The (*a*) Philoſopher makes four kinds of Nobility. Firſt, ſuch as have the Poſſeſſion of great Riches, and are al be to bear a great Port. Secondly, ſuch as have been ſo from great Antiquity. Thirdly, thoſe that by Vertue, and great Atchievements, have acquired Honour and Renown. Laſtly, ſuch as in Learning are Eminent. Under theſe Heads the Nobility may yet be ranked, if we take it in a large Sence, as the fit Subject upon which the Sovereign may impreſs that Character. But my deſign is to ſpeak of the ſecond and third Order only.

(*a*) Τῶν δ' γνωρίμων, πλοῦτος, εὐγενεία, ἀρετὴ, παιδεία. *Polit. l.* 4. *c.* 4.

How the Word *Nobiles* hath been uſed in the *Latin* and *Greek* Empire, when it was the addition to *Cæſar* in the Branches of the Emperors Families, and how in later times, I ſhall not trouble the Reader with, but refer the curious to the moſt Learned *Selden*, and to what I ſhall note in the Chapter of the Gentry.

Great

Great Vertues have ſublimed their Bloods, and ſeparated them from the dregs of the Crowds. Others are Veſſels of Common Clay; they are all *China* and *Porcellane*: others of Lead, Iron, Braſs, or Silver; they of pure Gold, or Diamonds of the old Rock. They are Stars of the firſt Magnitude in the Firmament of Government, yea the Firmament it ſelf, betwixt the upper and the nether Waters; betwixt the pure *Æther* of Celeſtial Intelligences (the Sovereign and Princes of the Blood) and the terreſtrial Waters of the Commons. The Bleſſed *Medium*, the double Trench to defend the Crown and the People.

A Character of the Nobility.

That there ſhould be ſuch illuſtrious Perſons is abſolutely neceſſary, for that in a Multitude there muſt be ſome, who deſigning to live vertuouſly, and having Souls of a richer Compoſition, by their own proper uncommon Atchievements, and the tranſcendency of their Vertues, ſhall lay the Foundation of that Nobility, which afterwards enriched and augmented by the noble Actions of their Succeſſors, will make their Families ſplendid, and Illuſtrious. So that Soveraigns (the Fountains and Diſpoſers of all Honours) juſtly reward them with the Enſigns of Nobility. The preſent Nobility, or their noble Anceſtors, (by fidelity and their great Capacities to ſerve the Crown and Commonweal) have been gilded with thoſe Rayes, and have Characters impreſſed upon them undefaceable by any thing but Treaſon, which taints their Blood; or Degeneracy, which ſmuts their Eſteem. They are the Buttreſſes of the Throne, the Gold and Silver work of the *Regalia*.

Neceſſity of a Nobility.

(*b*) It is a Reverend thing (ſaith the ingenious Chancellor) to ſee an ancient Caſtle, or Building, not in Decay, or a fair Timber Tree, firm and ſound; how much more to behold a noble ancient Family, which hath ſtood againſt the waves, and weather of Time.

(*b*) *St. Alban's* Eſſays, c. 14. Of Ancient Nobility.

New Nobility is but the Act of Power, the ancient, the Act of Time. Thoſe who are firſt raiſed to Nobility, are commonly more vertuous, but leſs innocent; for there is rarely any riſing, without a Commixture of good and bad Acts; but it is reaſonable that the Memory of their Vertues remain to Poſterity, and their Faults dye with themſelves.

(*c*) It is glorious in the Progeny of the old Nobility, and uſeful to themſelves, their King, and Country, to ſtudy to imitate the Perfections, and eſchew the Imperfections of their noble Progenitors, who were Founders of their Families and Honours: They no doubt were Learned, Judicious, and able Miniſters of State, ſuch as eaſed their Prince of their otherwiſe unſupportable Burthen of Government; ſuch as were ſenſible of the true Fountain of Honour, true Patriots of their Country, becauſe zealous for the eſtabliſhed Government, and coveted not to make themſelves popular in oppoſition to their Prince.

(*c*) —*miſerum eſt aliorum incumbere fame,*
Ne collapſa ruant ſubductis tecta columnis.
Juv. Sat. 8. v. 77, 78.

The uſe of Nobility.

Honour is one of the prime Badges of Nobility; the winning of that (ſaith (*d*) the learned Chancellor) is the revealing of a mans Virtue without diſadvantage. If a man perform that which hath not been attempted before, or attempted and given over, or hath been atchieved, but not with ſo good Circumſtances; he hath purchaſed more Honour, than by effecting a matter of greater difficulty, or Virtue, when he is but a follower.

(*d*) *St. Alban's* Eſſays, Of Honour and Reputation.

Honour that is gained, broken upon another, hath the quickeſt reflection, like Diamonds cut with Fucets; therefore its commendable for any to exceed his Competitors in Honour, by outſhooting them in their own Bows.

(*e*) *Idem* Eſſays, c. 14.

(*e*) A Monarchy, where there is no Nobility at all, (as among the *Turks*) is ever a pure and abſolute Tyranny. For Nobility attempers Soveraignty: a great and potent Nobility addeth Majeſty to a Monarch, but diminiſheth Power; putteth Life and Spirit into the People, but preſſeth their Fortunes. It is well when Nobles are not too great for Soveraignty, or Juſtice, and yet maintained in that heighth, as the Inſolence of Inferiors may be broken upon them, before it come on over faſt upon the Majeſty of Kings.

Concerning numerous Nobility.

A numerous Nobility cauſeth Poverty and Inconvenience in a State, brings a ſurcharge of Expence; and ſome falling to be weak in Eſtate, it makes a kind of Diſ-proportion betwixt Honour and Means.

Kings to countenance their Nobility.

To keep Nobles at ſome diſtance is not amiſs; but to deſpiſe them, may make a King leſs ſafe, and leſs able to perform any thing he deſires. This *Henry* the Seventh did, and though they continued Loyal to him, yet they did not co-operate with him in his Buſineſs.

The reaſon of State, that we may preſume, ſwayed with ſo wiſe a King, was, for that the Wars betwixt the Houſes of *York* and *Lancaſter* had been carried on by the ſidings of the Nobility, who had in thoſe Days numerous Retinues; the younger Sons of the Gentry, and ſometimes the elder, making a great part of the vaſt Families of Noblemen, and their Tenents holding their Lands by ſmall Rents, and due Service, enabled them to make great alterations in the State, accordingly as the chief of the Nobility were combined. So that he made Laws againſt the number of Retainers to leſſen ſuch dependences; and likewiſe bringing in uſe the making of Leaſes, made the Tenents leſs obliged to their Lords, paying their Rents; and by ſuch Tenures for Years, they grew Rich: ſo that thereby Freeholders exceedingly encreaſed, and all this helped to ſubduct from the Power of the Nobility.

Honours not to be too common.

(*f*) *Honores non eſſe temere pervulgandos aut effuſe dandos, alioquin eos obſoleſcere; raros enim honores & tenues eſſe glorioſos, effuſos & pervulgatos eſſe obſoletos & contemptos.* Giphanii Com. in cap. 3. lib. 5. Polit. Ariſt.

Honours are not raſhly to be made common, or prodigally given; otherwiſe they grow diſ-eſteemed, and unregarded: rare and few Honours are more glorious (ſaith (*f*) the judicious Comentator;) diffuſed, and common, bring Contempt and Sleight.

Conſentaneous

Conſentaneous to which is, what the forementioned Chancellor ſaith, That States which aim at greatneſs, muſt take heed how the Nobility and Gentry multiply too faſt; for that maketh the common Subject to grow to a Peaſant, driven out of Heart, and in effect but a Gentleman's Labourer. As in Copice Wood, if you leave the Stadle too thick, you ſhall never have clean Underwood, but Shrubs and Buſhes; and ſo you bring, that the Hundredth Poll is not fit for the Helmet, eſpecially as to the Infantry, which is the State of *France*, not of *England*. *St. Alban's* Eſſays. Of Greatneſs of Kingdoms.

But in this Particular, the Cuſtom of other Nations, a Princes Service, and incident conveniences are to be conſidered. For ſome will be won as much by Honours, as Offices of Profit; and it is leſs Expence to a Prince in the gratifying his well-deſerving Subjects. Beſides, ſomething muſt be allowed to Æmulations, and a rich Soil will bring a greater Crop than a barren.

In all Ages likewiſe ſome of the ancient Nobility are extinguiſhed, and it is fit to plant new Standards in the room of the decayed: So that what theſe Learned Men aſſert concerning ſpare Diſtribution of Honours, is to be conſidered with juſt Limitations.

The Splendor, Magnificence, and great Retinues of Noblemen, conduce much to Martial greatneſs; except in *Poland*, the State of Free-Servants and Attendants upon Noblemen, and the richer Gentlemen, hath been obſerved to be no where ſo peculiar in former times, as in *England*. Thoſe Retainers and humble Friends are fitted for all gentile Employments, and are a Seminary of the more polite Yeomanry; whereas a cloſe and reſerved living of Noblemen, and Gentlemen, cauſeth a Penury of Military Forces, and well-bred Yeomanry. Great Retinues of the Nobility uſeful.

The Nobility may be Eclipſed, by ſinking beneath their Orbs in affecting Popularity in oppoſition to their Prince, or rearing their Heads among the Clouds in Ambition. The Nobility not to deſert the Crown.

Whenever by Malevolent Aſpects of other Planets, their Influence on the State is leſs benign; or that the putrid Breath of ſome Male-contents taint their Allegiance, the Contagion is of a large Spread; their Blood being mingled with ſo many others of Power, takes Fire at once; and can neither be ſhed or rectified alone.

Sometimes their Blood may be chilled, when they conceive others interpoſe betwixt them and the warmer Gleams of the Throne, and they will not want Factious *Torpedoes*, that will benum their briſker Souls, if they be not wary to avoid their touch. But when their Lordſhips conſider that as they and their happy Anceſtors have had a plentiful Portion of their Princes Regards and Bounty, ſo they ſhould be content that others ſhare with them in their Princes Munificence, and ſhould not expect that their Families ſhould be every Ages Darlings: they will have more honourable and contented Thoughts, and own not only The old Nobility not to envy the new ones.

(g) *Fato quodam aut sorte nascendi, ut cætera, ita Principum inclinatio in hos, offensio in illos.* Annal. lib4.

the Truth, but yield to the necessity of that of (g) *Tacitus*, That as our Birth s are ascribed to Fate, or Chance; so the Inclinations of Princes to some, and their dislike to others, as he instanceth in *Lepidus*, under *Tiberius*.

We see in the great Oeconomy of the World (which we must believe is disposed by the Universal Monarch) some noble Families in every Age are Extinct, and other new ones by their Vertues and great Accomplishments are raised, and the Cadets of others like some Rivers are hid for some space under Ground, till when they appear again, they are known by their refined Parts to be of noble Abstract.

Not to repine at the Prince's Favours bestowed on others.

The Sun is the same most luminous Body, though some *Maculæ* are observed in it by curious *Telescopes*; and if Princes Beams shine not always with the same Serenity upon the district of some Families that it hath done, it is no more than the Sun in the great *Vortex* doth, and is no more to be repined at. Therefore it becomes those noble Souls to be content with their large allotments, and shake off all those Vipers that would sting them with Envy and Discontent.

It is well worth such Noblemens Consideration how their Interests are interwoven with that of the Crown, and if any unhappily have loosened the twine, or frozen the Zeal they have for its support, let them call to Mind the Vertue and Bravery of their Ancestors, and observe what Gemms or Gold-work they were of it, and strive to fasten themselves there again, and out of the Embers kindle again that Loyalty they have derived *ex traduce* from their generous Ancestors: so that

(b) *Lucan, l.2.v.557.* (a) *Fervidus hæc iterum circa præcordia Sanguis Inacleat.*——

And as the Crown hath bestowed Honour and Wealth upon their noble Families, so let them never be wanting with their utmost Industry, to support it in all its splendid Prerogatives; and of all the Infamy of Mortals, let not ingratitude be laid to their Charge.

How the Nobility may honourably acquaint their Prince with Grievances.

The Nobility are *Conciliarii nati*, and as their Birth and places give them easy access to the Princes Privy-Chamber and Cabinet, though they be not of his secret Council; so they have opportunities to present the State of Affairs, and ill managery or grievances of the People, when they conceive them concealed from their Prince, both better and more effectually than others of a lower Rank.

But then it should be done like Persons of Honour with all Respect and Duty to their Prince, and the ostentation of this sort of Charity, should not lessen the usefulness of it; much less should they blow a Trumpet when they perform it, either to aggrandize the Enterprize, or to raise discontent at the denial.

In

In every Kings Reign, it hath been a flouriſhing time, and happy, when the Nobility ſtudied with a refined laudable Contention to æmulate one anothers Vertue, ſtriving to out-do one another in the Service of their King and Country, uniting in that glorious *Teſtudo*, to defend their Princes Prerogative, and the Laws that adjuſt their own, and the Peoples Priviledges.

How Commonwealths depreſs the Nobility.

It is never to be forgot, how in our late Commonwealth, the Houſe of Peers was by the very Poſteriors of the Commons, Voted uſeleſs and dangerous. No ſooner was that ſacred Head ſeparated from them, but they were degraded to Commoners (as to any Legiſlative Power:) and though thoſe Noblemen that were content to ſit in the lower Houſe, were highly careſſed and applauded; yet a few Years hath changed the note, and their Names will be recorded to Poſterity, in far leſs Luſtre than if they had more ſtrenuouſly eſpouſed the afflicted Kings Quarrel: and it is not to be doubted, but the Sence of that will be a moſt prevalent Antidote againſt the Defection of any of the Nobility, that will conſider the naturalneſs of ſuch a degrading, if the Commonwealth-Men ſhould ever appear again without their Vizors; and it will be an excellent amulet to keep them from the Infection of ſuch Principles and Practice.

How the Nobility had greater Power anciently than now.

It is worth noting, that *William* the Conqueror giving to his Nobility great Fees to be held of him in *Capite*, for ſome Ages the Nobility had great Intereſts, and numerous dependences, and had ſpecial Jurisdiction over great Baronies; and while they ſerved the Crown according to their Tenures, the inferior Gentry and Commoners being one way or other Tenents to them, could do little in oppoſition to the Crown. But when in King *John* and *Henry* the Third's time, their greatneſs was dangerous to the Crown, the Commons were brought in to be a part of the Parliament. Yet for ſome while after they retained their Grandeur, till (as I have hinted) *Henry* 7. retrenched them, and Queen *Elizabeth* preferring ſo many new Men, makeing leſs uſe of the ancient Nobility, ſtudied to gain the common Peoples Affections by all Arts and Bounties ſhe could uſe: and in after-Ages the Nobility being leſs valued by the Freeholders, and encreaſed in Number, and ſome of them adhering to the two Houſes againſt their Sovereign, their intereſts both with the Parliament and People grew leſs.

But now under a Prince who ſets a true value upon the Nobility, if they he not wanting to themſelves, they may hope to attain the luſtre of their noble Anceſtors, and the Commoners be no ways abridged of their Priviledges. For then the Government is in the happieſt Condition, when the Nobility are great without Ambition, rich without Oppreſſion, eminent in Vertue as in Character. The Gentry ſo deporting themſelves to the Commonalty as they deſire the Nobility may to them; and the Commonalty with humble Induſtry, peaceably

peaceably enriching themſelves, and enjoying that freedom and liberty, which may keep them in Heart and Courage to ſerve their Prince and Country with chearful Alacrity, and out-do thoſe of their Rank in all other Dominions; which in the *Engliſh* Soldiery is obſerved in all Wars to be their peculiar Excellency, aſcribable principally to the Benignity of the Government which diſpirits them not: and when this liberty is not abuſed to Licentiouſneſs, but reſtrained within the Bounds of humble Candor and Modeſty, Reverence to their Superiors, and thankfulneſs to their Prince; all is in an happy Frame.

CHAP. XXXVIII.

Of the Gentry of England.

I Shall not detain the inquiſitive Reader upon the derivation of the word *Gentilhom*, or Gentleman, but refer him to (a) Mr. *Selden*, who at large diſcuſſeth the point; whether with *Velſerus* and ſome others, it be derived from *Gentilis* or Heathen, as introduced when the *Goths*, *Hunns*, and *Vandals* having overrun the *Roman* Provinces, were in a better Condition, though Gentiles, than the Chriſtians, under the *Romans*; or that it is derived from *Gens*.

(a) Titles of Honour, *p.* 861, 862. Whence the Name.

I am more inclined to be of the latter Opinion, finding it more agreeable to the common Uſe. For *Cicero* (b) calls thoſe *Gentiles, qui ex eadem Gente; Ingenui, qui nunquam Capite ſunt diminuti*. *Gens* conſiſting of a multitude which have ſprung from one Generation, and of many of theſe *Gentes* conſiſts a Nation; to which agrees that of (c) *Feſtus*, that *Gentilis* is one born of the ſame *Gens*, or Kindred, and who is called by the like Name. So we find the *Horatii*, the *Corvine*, *Julian*, *Flavian* Family, *&c.*

(b) *In Topicis.*

(c) *Gentilis dicitur ex eodem genere ortus: & is qui ſimili nomine appellatur.* Feſtus ad Verbum.

So the *Greeks* uſe the words Εὐγενὴς, Γενναῖος, Εὐπαλείδης, Εὐπάτωρ, for one nobly deſcended from great Parentage. So Εὐγένεια was Nobility, which (d) *Ariſtotle* calls Ἀρχαῖος πλοῦτος καὶ ἀρετὴ, Antient Wealth and Vertue, or the (e) Dignity of the Anceſtor. The firſt Authors of it being ſtiled famous Men, and Honourable, Ἔνσημοι and τίμιοι.

(d) *Polit. lib.* 4. *c.* 8. *lib.* 5. *c.* 1.

(e) Ἐνημότης προγόνων. *Rhetor. ad Theod. lib.* 2. *c.* 5.

In the largeſt acceptation of the Word, as it is now uſed (ſaith the judicious (f) *Selden*) it denotes one that either from the Blood of his Anceſtors, or the Favour of his Sovereign, or of them that have Power from the Sovereign, or from his own Vertue, Employment, or otherwiſe, according to the Laws and Cuſtoms of Honour in the Country he lives in, is ennobled, made *Gentile*, or ſo raiſed to an eminency above the Multitude, perpetually inherent in his Perſon.

(f) Titles of Honour, *p.* 852.

Theſe

The use of the word *Nobilis.*

These are stiled the *Nobiles minores*, for distinction sake, the word *Nobiles* being now appropriated to those of the higher Rank. The ancient use of *Nobilis* (especially before the *Roman* Monarchy) was such, that it was justly given to none but him that had *Jus imaginum*, or some Ancestor at least that had born some of the great Offices, or their *Magistratus Curules*; as (*g*) Censorship, Consulship, *&c.* From whose Image kept he had the *Jus Imaginum.* Therefore the preceding Ancestor was called *novus Homo*, or *Ignobilis.*

(*g*) *Rosini Antiq. Rom. lib.* 1. *cap.* 19.

Some Ages after the *Romans* were under a Monarchy, the Title of *Nobilis* was given to such as by the Emperors Patents of Offices, or their *Codicilli Honorarii*, were first raised out of the lowest Rank. After that, Arms or Ensigns of Distinction, born upon Shields, grew to be in many Families Hereditary, (which was about four hundred Years since, as Sir *Edward Bish* in his *Aspilogia* avoucheth) it came into frequent use, that he, who was either formerly ennobled by Blood, or newly by acquisition, either assumed, or had by Grant from his Sovereign, or those deputed by him, some special note of Distinction, by Arms also to be transmitted with his Gentry to his Posterity.

(*h*) *Ibid.*

Yet (*h*) Mr. *Selden* notes, that in the Proceedings in the Court of Chevalry, betwixt *Reginald* Lord *Grey* of *Ruthin*, Plaintiff, and Sir *Edward Hastings* Defendant, concerning the bearing of a *Manch Gules* in a Field Or, in the depositions taken in the *Moote Hall* at *Bedford*, it is recorded, that *John Botiler* of the County of *Bedford*, and *Roger Tunstal*, Mayor of *Bedford*, having been the Plaintiffs Servants, severally deposed, *Il est Gentilhom d' Aunceſtrie, mas nad point, d' Armes.* That he was a Gentlemen of antient time, but had no Arms. But I shall pass from this.

Gentlemen without Coats of Arms.

Advice to the Gentry.

That which I desire the Gentry to observe is, That they are the Seminary of our greater Nobility, and that from Loyal, Wise, Learned, Valiant and Fortunate Persons, of their Order, in all Princes Reigns, the Nobility have sprung. Therefore as some of them are derived from as numerous Ancestors, as any in other Kingdoms, and have by Hereditary Succession greater Estates than many foreign Counts, and as they desire either to conserve the Repute their Ancestors have honourably entailed on them, or to transmit them to their Posterities; so it will be their Interest and Glory to accomplish themselves in all sorts of useful Learning, whereby they may be Serviceable to their King and Country.

There are Bodily Exercises they should be well skilled in, as Fencing, Riding the great Horse, and all Military Exercises, to enable them to serve in the Militia of the Nation; and their diligent perusing all sorts of History, and the Laws of the Land, will fit them for the managing of Civil affairs, and dispensing the Kings Laws, as Justices of Peace, Sheriffs, Commissioners, Representatives in Parliament, as also for the greater Offices of State.

Since

Since they are born to large Patrimonies, and thereby have a more generous Education, and derive a more refined Spirit from their Anceſtors, they can with infinite more Eaſe enter into publick Employment, having none of thoſe ſinking (*i*) weights of Poverty, and mean Education, which enforce others to uſe extream Diligence e're they can mount the firſt half Pace, the Gentleman is ſeated on, by that time he leaves his Tutors.

(*i*) *Haud facile emergunt, quorum virtutibus obſtat Res anguſta domi*—

It is true the Priviledges of the Gentry of *England*, properly ſo called, are not ſo great as in ſome Countries, where they have power of Life and Death over their Servants, or are exempted from Taxes, and enjoy other Immunities which are denied to the Commons; yet they have others as beneficial in that they make up a great ſhare of the Miniſterial parts of the Government.

It is required by God and their Prince, that they ſhould ſo deport themſelves as they may be ſingular (*k*) Examples to their Tenants and Neighbours, of Wiſdom, Temperance, Juſtice, Loyalty, and all the Syſtem of Vertues; and by a generous Hoſpitality, without Debauchery, preſerve their Intereſt in the affection of their Neighbors, and that the Poor may daily and zealouſly pray for them, being made the Voiders, and receiving the *Sportula* of their plentiful Tables. By this way of living they will ſow among their Neighbours the Seeds of all uſeful Vertues, and enrich their Countries, and be able in time of need to ſerve their Prince with their numerous Dependants.

(*k*) Ὀφῶσι σὺν φρόνησι τὴν δίαιταν πρέπουσαν, καὶ μηδὲν μάτην ἀναλίσκοντα. *Dio, lib.* 2.

It is for the uſe of the blooming Gentlemen I write this. The more ſage and ancient need only ſuch Intimations to refreſh their Memories. I have made Obſervations how fatal it hath been to themſelves, and the whole Kingdom, when the Gentry have been ſeduced to ſleight at firſt, and after, (as they have been wrought upon by Deſigners) to over-awe or overturn the Government, and either by Piques among themſelves, or Æmulations, Envies, and Diſcontents, have been brought into the Combinations and Conſpiracies with thoſe, who under the ſpecious Pretences of enlarging their Priviledges, have ſubjected themſelves as well to the ſlavery of Red-coats, and the Tyranny of a *Corps du guard*, or Council of War, as they had their Prince under their Committees and Armies: which conſiderations I hope will be worth their remembring.

What I have writ in moſt of the Chapters of this Treatiſe, leſs or more appertains to the Gentry, out of a true and cordial deſire, that if any ſuch Critical time ſhould in any Age return, as that of Forty and Forty one, or Eighty and Eighty one; the Gentry may conſider the Hiſtory of former Ages, and be able to diſtinguiſh betwixt Realities, and feigned Pretences, and will well weigh what I have writ in the preceding Chapter of the Nobility: for that it is in moſt particulars applicable to to them, which makes me ſhorter in this; and that above all things they will ſeriouſly conſider, that though in every

every (*l*) Generation new Men do ariſe, that to carry on their Factious Deſign, pretend different Cauſes; yet the ends of all that are Male-contents, and ſeditiouſly diſpleaſed with the Government, is the ſame, and commonly their Fate is parallel.

(*l*) *Magis alii homines quam alii mores.* Tacit. 1. Hiſtor.

Therefore above all the Infections, let them ſtudy to avoid that of murmuring and repining againſt the Government, or that of being ſeduced by thoſe, who cover their dark Thoughts and Deſigns too cloſe to be diſcovered by common Eyes.

The more ſuch pretend Zeal for the common Good, the more they pretend publick Spirits, and care of Religion. If they be found to have any the leaſt Tincture of Immorality, Envy, Ambition, Revenge, Cruelty, or aſpiring in their Tempers, the more they are to be ſuſpected and avoided.

CHAP. XXXIX.

Of the Commonalty of England, *of the lower rank eſpecially.*

The Common Peoples Duty.

THESE are more eſpecially the ſubject matter of Government. The Employments they are engaged in, makes it more profitable for them to look downwards, and cultivate their Freeholds and Tenements, and reap the golden Fruits of their Toil; than to ſpend their time in the fruitleſs enquiries after the managery of States and Empire: for whereever Soveraignty lodgeth, they muſt ſtill be Subjects.

(*a*) *Cornwallis's* Eſſays, 46.

Obedience (ſaith a well obſerving (*a*) Author) not Examination, is the deſtined Function of the Common People, which Laws preſerve them in. The Induſtrious would ſoon be ruined by the Free-booters in every Hamlet, if the Laws and Government were not their Guard. By the ſeveral Rebellions (properly of the Commons) in *Richard* 2. *H.* 8. and *Edward* the Sixth's time, we have ſad Examples of the Calamities they brought, not only on their Neighbours, and the diſturbance they gave the Government; but likewiſe the ruins they brought upon themſelves: and when they had wearied themſelves with Rapine, Murthers, and a Hundred cruel Ravages, and Butcheries, they were at laſt either totally ſubdued, and their Chieftains Executed, and the reſt Fined, or they periſhed in the Fight; being never able to effect any of their pretended Liberties, they made the Inſurrections to have obtained.

The Miſeries of Inſurrections.

It is for want of Conſideration, that they are decoyed into ſuch barbarous Outrages, which in ſuch Rebellions they generally commit. They ought to conſider, and that very ſeriouſly, that it is from their Princes ſollicitous Care, that they enjoy Peace and Plenty: to them they owe not only Al-

Their Obligations to their Prince.

legiance and Obedience, as they are their Soveraigns; but especially Gratitude, Loyalty, and all dutiful Services. For the good Laws from time to time have been confirmed by their Kings, for their Prosperities; without which, they would be in a continual State of War and Feuds one against another.

They owe to the Paternal Care and Prudence of the Sovereign and his Government, those Methods and Rules, whereby they are so benignly ruled, (in *England* especially) whereby they are in a freer and more plentiful Estate than any other Commoners in the World. By the vertue of those Priviledges granted to them by their Kings, they have Propriety in their Goods, none can out them of their Possessions, imprison, or molest them, while they observe the equitable Laws.

Their Privileges.

They have according to their several Capacities and Abilities, a participation of Offices in their particular Hamlets, Parishes, Wapentakes, or Counties, either relating to the assistance to the Justice of the Land in Juries, or conserving of the Peace, in being petty, or chief Constables, or other Officers; and have a peculiar Priviledge, many other Commoners want, of chusing their Representatives, whereby they are only subject to such Laws, as they or their Ancestors have given consent to.

The Government (worthy Country-men) makes fertile your Enclosures, protects your Flocks and Herds, secures your going out, and coming in, makes your Sleeps undisturbed, guards your home-bred Commodities when you send them abroad, secures those are brought home to you, appoints you Markets for buying or selling your Corn and Cattle, and your own Manufactures.

The Calamities they sustained in the late War.

Let those among you, that are not ashamed they were Sequestrators, Membrs of the Parliaments Army, or active Officers, Oppressors, Plundereres, or Informers against their Loyal Neighbours, consider what they reaped in the late unhappy Wars, begun with all the specious Pretences of redressing grievances, securing Propriety, and reforming Religion (precious Names most wickedly abused.) Remember how unsupportable were the Taxes and Sequestrations. What affrightments were you continually in by the Quartering of imperious Soldiers, and their Plunders, where they neither left Food nor Rayment for your Wives and Children; and what they could not devour, or carry away, they destroyed? Consider the effusion of so much Blood in the cruel Battles, and their most unjust High-Courts of Justice, how all the Laws either were stifled, or miserably distorted.

Advice to the Commonalty.

The best Preservatives against the relapse into such miserable times, is to reflect upon them often, to live quietly under your Sovereign, to give him no occasion to unsheath any of his Swords against you, to reduce you to Obedience. Avoid all Factious Whisperers of discontent. You were within these six Years by past, wrought so upon by cunning Designers of a Commonwealth, that you made choice of such Representatives

tives, as neither would ſupply that Prince of immortal Memory, who had preſerved them and you in that Peace he had reſtored them to, when nothing but War, and miſerable Devaſtations were in all the Countries of the Continent; nor admit our preſent Gracious Soveraign (who had adventured his Life ſo often for their Safety) to ſucceed in the Throne of his Royal Anceſtors.

Remember I beſeech you (dear Countrymen) theſe things, and conſider how near the Gulph and Pits Brink of inevitable Miſeries you were. Be thankful to thoſe Loyal Perſons, who by their Counſels and Addreſſes withheld you from the imminent Ruine. Be miſ-led no more by ſuch as can ſow nothing but Darnel, Cockle, Poppy and Tares among your Corn; would conſume your Grain, and leave you nothing but the Chaff. Such as by inſtigating you to Inſurrections, under Pretence of Religion, or any other Wheedles, would neceſſitate the Government for your own Security, to rule you with a Scepter of Iron; whereas now you are under one of pure Gold, beſet with all the Jewels of Heroic Vertue.

Would you avoid the Slavery of the *French* Commoners, and be never in danger of being Peaſants? Would you enjoy what you and your happy Fore-fathers have done in peaceable times? Then ſtudy your Duty of Obedience to the Laws, baniſh all Murmurings, and Repinings, heartily pray for the King's Proſperity, heartily endeavour to ſerve him with your Lives and Fortunes againſt his Enemies; live quietly under his careful and merciful Conduct; adore that divine Providence that hath eſtabliſhed him peaceably in his Throne, and out of infinite Compaſſion to theſe Nations, hath prevented a Civil War.

Be ſincerely and cordially thankful that you are under the Government of ſuch a Prince, who ſo freely and ſpontaneouſly promiſeth to defend your Religion, ſecure your Properties, and adventure his Perſon for your Defence: Who is juſtly reverenced abroad, ought to be as entirely honoured, and affectionately loved, and dutifully obeyed at home. So ſhall the Government be Eaſy, Beneficial and Merciful to you; ſo ſhall you have full Barns and Purſes, and all the Bleſſings of Peace and Security in the long Enjoyment of them.

CHAP. XL.

Of the Temper and Diſpoſition of the Common People of the loweſt Rank.

The various Diſpoſition of the Common People.

LIVY (a) tells us that the Common People in Fear and Hope generally is in exceſs. They want skill to make Obſervations of the true Cauſes of Matters, and conclude Effects from wrong Cauſes. They are ignorant of their duty to the Publick, never meditating any thing (with Reflection) like their particular Profit. If a wet Seaſon happen of continuance, they murmure and repine, as if their whole Tillage were loſt, and a long Drought produceth the like effect.

(a) *Vulgus metu aut ſpe nimium.* Lib. 23. *Nihil in vulgo modicum.*

As to the publick, it is their Nature (b) ſlaviſhly to fear, or proudly to domineer, affrighting the Government, if they be not brought to ſome degree of Awe; and if they be brought to fear, their Governours may with more ſafety deſpiſe them: for they are wholly Strangers to the Golden mean of Liberty, which they neither know how to enjoy or want; deſpiſing and ſleighting the Freedom they poſſeſs, and wrought upon by Seditious Arts of Popular Men, vainly hoping to attain to ſome Enlargement of that Liberty, which they fondly dream of.

(b) *Aut ſervit humiliter aut ſuperbe dominatur. Terrere, ni paveant; ubi pertimuerint, impune contemni.* Tacitus, 1. Annal.

In their own temper (ſaith (c) *Salluſt*) they are changeable, Seditious, full of Diſcord, deſirous of Novelty, impatient of Peace and Idleneſs: and if we allow them at ſome Seaſons at leaſt to be a calm Sea, yet as that by Winds, ſo they are eaſily ſwelled by the blaſts of Seditious Perſons; to receive which, they hoiſt up all their Sails. According to that of the (d) Orator, *Ut Mare quod ſua natura tranquillum, ventorum vi agitari videmus, ac turbari; ſic populus ſua ſponte pacatus, hominum Seditioſorum vocibus violentiſſimis tempeſtatibus concitari ſolet.*

(c) *Vulgus ingenio mobile, ſeditioſum & diſcordioſum, cupidum novarum rerum, quieti & otio adverſum.* Sall. in Jugurtha.

(d) *Orat. pro Cluent.*

They are too credulous of Reports, and the Deſigners to put them into ferment need no more, but to put in practice what (e) *Tacitus* mentions of the falſe news of *Otho*'s being ſlain; That at firſt a wandring and uncertain Rumour, then as in great lies, ſome ſay they were preſent, and ſaw it; the rejoicers and curious being apteſt to believe the Report. So that at laſt a general belief is given, few being willing to take the pains to make ſtrict Enquiry. And when ſuch Rumours are forbidden, more horrid things are invented than at firſt, and ſo are more difficultly ſuppreſſed; for there is a wonderful propenſity in them, to receive (f) and believe all new Reports, ſtretching all Rumours vaſtly beyond the reality of matters: fame being with them as ſure a ground of Belief, as Reality.

(e) *Vagus primum & incertus rumor; mox, ut in magnis mendaciis, interfuiſſe ſe quidam & vidiſſe affirmabant; credula famæ inter gaudentes & curioſos.* Tacit. 1. Hiſt. p. 8.

(f) *Facilis civitas ad credenda accipiendaque omnia nova.* Tacit. ib. p. 5.

Res

Res auget cuncta, ut mos eſt, fama in majus credita.

If in things they fear the Rumour once be broached, how ſwift is the Alarm! all the Air is full of Speaking Trumpets, though nothing to be ſeen.

-----Sic quiſque pavendo
Dat vires famæ, nulloque Auctore malorum
Quæ finxere timent.

This quality of the Vulgar, the Deſigners of Forty one well underſtood, and moſt induſtriouſly improved. The tumults of the multitude were governed by them, all the great miſchiefs were facilitated by the Midwivery of theſe contrived Reports; Jealouſies and Fears preparing Peoples Minds for every ill Impreſſion. How they were wrought upon in 1641.

The breaking of a Plank by two Corpulent Gentlemen, occaſioned a Report that the Parliament-Houſe was undermined; and others were ſo quick-ſcented, that they ſmelt Powder. This was carried with that ſwiftneſs into the City, that the Rabble in exceſſive manner flocked to *Weſtminſter*, full of revenging Fury.

So they pretended Intelligence of foreign Invaſions, to put the Kingdom into a poſture of Defence, and the miſerable Country armed with great forwardneſs upon every Alarm, little foreſeeing what the ends of thoſe diſmal Acts would be.

We of late had an Experiment of this in the Story of the Iſle of *Purbeck*, when the report of the landing of the *French* raiſed many Thouſands of Men, whom the noble Peer ſaid he could have conducted whither he would by a Letter. We cannot forget how the report of the Fireworks, found in *Somerſet* Houſe, the forty Thouſand Pilgrims, and Black Bills alarmed the Credulous. Such *Mormos* and *Spectres* ever will be made uſe of by thoſe who intend to work upon the *Mobile*. How of later times.

If the Multitude could be made Wiſe, to rely upon their Governours Wiſdom, (that can better foreſee Danger than they, and have greater ſhare in the preſent State, and having more to loſe, will more carefully endeavour to prevent Miſchiefs,) they would not be ſo appalled at imaginary Dangers, ſuggeſted by crafty Men, or be ſo ſuſpicious that they are not ſo well governed as they ſhould be, or ſo apprehenſive of Oppreſſion; and if they ſhould miſcarry under ſuch Conduct (which they can have no reaſon to ſuſpect) they would periſh with a great deal of Diſcretion. Advice to them.

But alas there is in all the common People (as (g) *Plutarch* hath noted of old) ſomething malignant, and querulous againſt Government; they yield open Ears to detracting and blackening Speeches againſt their Governours. They are generally ſtrong in Will, weak in Judgment, their Affections commanding their Belief,

(g) Παντὶ γὰρ δήμῳ τὸ κακόηθες καὶ ἀλαίπον ἔνεστι πρὸς τὰς πολιτευομένους. *Plutarc. Poliț.*

Belief, and preſaging as they believe, ſhort-ſighted in diſcovering Conſequences of matters, and eaſy to receive Impreſſions from their Demagogues.

Some Birds are whiſtled into the Snare, others driven: Apes and Dottrels caught by imitation of ſuch Poſtures as others aſſume. They are the ſubject matter of all Seditions, and when they are wrought upon to believe they are like to be oppreſſed, they can eaſily find among themſelves a *Cade*, *Straw*, *Tyler*, or *Maſinello* to head them.

The general Temper of the People is well deſcribed by (*h*) *Tacitus*, in that Speech of *Galba* to *Piſo*, Thou art to command, ſaith he, over Men, that neither will endure abſolute Servitude, nor abſolute Liberty. In another place of the ſame Book, he tells us, *Vulgus, ut mos eſt, cujuſque motus novi cupidus*: It is the cuſtom of the Common-People to be deſirous of Changes. All which is only in hopes that they ſhall be at more Eaſe and Liberty, though they are moſtly miſtaken in the means to attain it.

(*h*) 1. *Hiſtor. Imperaturus es hominibus qui nec totam ſervitutem pati poſſunt, nec totam libertatem.*

It is true, (*i*) Liberty is deſirable by the Good as well as the Evil, the Strenuous as well as the Slothful; but the great difference is, that the good and wiſe know the Extent of it, and know, it no ways is more happily enjoyed, than by Obedience to the Government and the Laws. But the common ſort judge it to conſiſt in doing as they liſt, and being under no Rule or Correction; whereas (*k*) *Livy* tells us, The Force and Strength of Empire, is in the Conſent of the Obedient.

(*i*) *Libertas juxta bonis & malis, ſtrenui & ignavis optabilis eſt.* Salluſt. ad Cæſarem.

(*k*) *Vires Imperii in conſenſu obedientium ſunt.* Lib. 2.

We find another Character of the Common Peoples Deportment in dubious times, ſuch as were thoſe in *Rome*, when *Otho* was ſupplanting *Galba*, (*l*) *Mixtis ſervitiis & diſſono clamore, cædem Othonis & Conjuratorum exilium poſcentium; ut ſi non Circo & Theatro ludicrum aliquod poſtularent, neque illis judicium aut veritas, quippe eodem die diverſa, pari certamine poſtulaturis; ſed tradito more quemcunque Principem adulandi licentia Acclamationum, & ſtudiis immanibus.*

(*l*) 1. *Hiſtor. p.* 193. *Edit.* 5. *Lipſ. fol.*

CHAP. XLI.

Of Subjects Obedience.

CUrtius (*a*) ſaith, That in ſome Countries there is an inbred Obedience, or Veneration to their Kings. To this day we find the *Eaſtern* Monarchs, as the Grand Seignior, *Sophy* of *Perſia*, and others, to have a more abſolute Power than the Chriſtian Kings, and that their People hold their Race ſomething Divine.

(*a*) *Ingenita quibuſdam Gentibus erga Reges ſuos veneratio.* Lib. 3.

Obedience

Obedience to Authority by (*b*) *Æſchylus* is rightly termed the Mother of Felicity; for by it we enjoy whatever Benefits the Prince, the Father of his Country, and all the fruitful Bleſſings of Peace and Plenty, the indulgent Mother of our Happineſs here on Earth can beſtow upon a People.

(b) Πειθαρχία γὰρ ὄντι τῆ εὐπραξίας μήτηρ.

(*c*) *Philo* the *Jew* ſtiles it the beſt, and moſt profitable thing in our whole Life. Therefore (*d*) *Theopompus*, King of the *Lacedæmonians*, hearing one attribute the ſafety of *Sparta* to the Skill the King had in Government, made anſwer, That it was rather to be aſcribed to the obedience which the People ſo chearfully payed to their Governours; for in *Sparta* above all other places, the moſt powerful Citizens ſhewed themſelves moſt obſequious to their Magiſtrates, and by their Example, drew the reſt to do the like, as knowing Obedience to be the greateſt requiſite both in Cities, Armies, and private Families. To which purpoſe we find the Speech of (*e*) *Chryſantas* to his Country-men the *Perſians*, telling them, They can take no Town of their Enemies, nor keep any City of their Friends, if they be diſobedient: No Army if they be tumultuous or irregular, can obtain Victory; nor can any good be effected by thoſe that are not obedient to Superiors. By this their Citizens were well governed, their Houſes preſerved, Ships brought to the Coaſts to which they were bound: following their Prince, they carried all things before them, leaving nothing half done; by this they not only purchaſed good things, but preſerved them.

(c) Ἀρχὴς τὸ κάλλιστον καὶ βιοφιλέστατον. *In lib. de Joſepho.*

(d) *Plutarch. in Præceptis.*

(e) *Xenoph. Cyropæd. lib.* 8.

(*f*) *Cicero* tells us, That *Plato* likened diſobedient Perſons to the *Titans*; for as thoſe ſet themſelves in Oppoſition to the Gods, ſo theſe to the Magiſtrates.

(f) 3. *de LL.*

The grave Hiſtorian (*g*) counts it the Infelicity of *Otho*, That though his Soldiers under *Titian* were full of Spirit, yet withal, they choſe rather to interpret the Commands of their Captains, than to obey; and (*h*) likewiſe tells us, That if every one might diſpute Commands, Obedience ceaſing, the Government would be diſſolved.

(g) *Qui tamen juſſa Ducum interpretari, quam exequi mallent.* 2. Hiſt.

(h) *Si ubi jubeantur ſingulis quærere liceat; pereunte obſequio etiam Imperium intercidit.* 1. Hiſt.

To govern, and to be governed, are of ſo near Relation, that from the Compoſition of them together, (*i*) *Crito* the *Pythagorean* well noteth, both the Strength and Concord of the State ariſeth.

(i) *Apud Stobæum, Serm.* 1.

Two both wholſome and neceſſary things (ſaith the great (*k*) *Cæſar*) Nature hath eſtabliſhed among Men, to Rule, and be Ruled, without which it is impoſſible that any thing, for never ſo little a while, ſhall hold out.

(k) Φύσει γὰρ ἀναγκαῖα ἔστιν ἃ καὶ συμφέρει, τῷ μὲν ἄρχειν ἐν ἀνθρώποις, τῷ δ' ἄρχεσθαι πάντα. *Dio, lib.* 41.

Qui imperium libere excipit, Partem ſervitutis acerbiſſimam effugit; facere quod nolit non qui juſſus aliquid facit, miſer eſt, ſed qui invitus facit, ſaith *Seneca*: (*l*) He that chearfully and willingly obeys Commands, eſcapes the bitterest part of Servitude, to do that which he would not; for he is not miſerable, who doth what he is commanded, but he that doth it unwillingly.

(l) *Epiſt.* 61.

All

All the Office of the chief Magiſtrate is corrupted and diſſolved, if any, with due Obedience, do not that which ought to be done, but inſtead of chearful Obſervance, require time for advice, and Deliberation; for all ſuch as make an heſitation in their Duty, and puts off, have no other inducement to it but Fear, which is an oblation without an Heart, ſpiritleſs, and palled.

(m) *Tibi ſummum Judicium Dii dedere, nobis obſequii gloria relicta.* Tacit. 6. Annal.

M. (*m*) *Terentius* told *Tiberius*, That to the Emperor the Gods had given the higheſt Judgment of things, and to the Subjects the Glory of Obedience is left.

(n) *Ea enim quæ obſequi non oportet, leniter ac verecunde, ac ſine deteſtatione nimia, ſineque opprobratione acerba reprehenſionis, declinanda ſenſim, & relinquenda potius eſſe quam reſpuenda.* Noctes Atticæ, c. 13.

(*n*) *Aulus Gellius* gives an excellent Rule how Subjects ſhould behave themſelves in Caſes, where they are not free to act and obey, *viz.* That in thoſe things which it behoves us not in our Opinions to obey, we are to decline by little and little, mildly and reverently, without ſhewing of too much Deteſtation, or bitter reprehenſion, and opprobry; leaving the things rather undone, than rejecting them.

Theſe wiſe Directions of ſo great and ancient an Author, are worth Imitation by our ſturdy Beggars of Liberty, who do or have done it in ſo imperious a way, as if they were in a condition to command it; and yet when they had the Power, moſt Tyrannically exacted both Civil and Spiritual Obedience from all others, that were not of the ſame Mold and Cut with themſelves.

(o) *Hæc unitas & hic maximi Imperii contextus in partes multas diſſiliet.* Senec. de Clem. lib. 1. c. 4.

The Excellent *Seneca* ſaith, That Diſobedience would be the Deſtruction of the *Roman* Commonwealth, and ſo long the People would be out of Danger of it, as they endured the Bridle; which if once they broke, or being by any chance broken, they ſuffered not to be again fitted on: (*o*) the unity and Contexture of the greateſt Empire would fly in Splinters, and the ſame end there would be of the Cities Dominion, that there was in obtaining it. For of old the Commonwealth was ſo conſtituted, that the Ligament betwixt the Sovereign and Subject could not be diſſolved, without both their Deſtructions; for as the Prince ſtands in need of the Peoples Strength, ſo the People of the Headſhip of the Prince.

(p) *Olim enim ita ſe induit Reipublicæ Cæſar, ut diduci alterum non poſſit ſine utriuſque pernicie.*

To the which, (*p*) *Cæſar* ſaith, He ſo emboſomed, and inweaved himſelf into the Commonwealth, that the one could not be disjointed from the other, without the Deſtruction of them both.

But every Malecontent will be ready to ſay they are for Government, and can chearfully obey good Princes; but ſuch as exerciſe Arbitrary Government, or are Vicious and Irreligeous thoſe they cannot obey. To ſuch I would recommend the Saying of (*q*) *Marcellus* about *Veſpaſian*, We ought to deſire good Princes, but to ſubmit to whatever they be. So (*r*) *Cerealis* told his Soldiers, As we endure Barrenneſs, and orecharging Rains, and the reſt of the Evils of Nature, ſo ought we to undergo even the Luxury, and Covetouſneſs of Princes. For Vices will be while there are Men, but thoſe are not continual, but by the intervening of good Princes are recompenced. Mr.

(q) *Bonos Principes voto excipere, qualeſcunque tolerare.* Tacit. 4. Hiſtor.

(r) *Quomodo ſterilitatem aut nimios imbres, & cætera naturæ mala, ita luxum vel avaritiam dominantium tolerare.* Ibid.

Mr.(s)*Hobs* truly obſerves, That the vertue of a Subject is comprehended wholly in Obedience to the Laws of the Commonwealth; for to obey the Law is Juſtice and Equity, which is the Law of Nature; and to obey the Laws, is Prudence in a Subject: for without ſuch Obedience, the Commonwealth (which is every Subjects Safety and Protection) cannot ſubſiſt. Indeed Miſchief more often happens to any Kingdom, from the waywardneſs, or factious Diſobedience of Subjects, than from the ill Government of Princes.

(s) Civil Wars, *p.* 51.

Therefore (t) *Cleobulus* rightly obſerved, That the Republic is well compoſed, where the Subjects fear Infamy more than the Laws; for then it may be preſumed, they are Obedient out of a Principle of Vertue, rather than Awe.

(t) *Plut. Canviv. 7. Sapient.*

Plutarch (u) ſaith, That City or Kingdom is famous, where every one performeth his Office. If the Prince do what becomes him, the Magiſtrates exerciſe their Places, and the Commonalty obey their Magiſtrates, and the Laws.

(u) *De Inſtitutione Principis.*

This is the Bleſſed Harmony, wherein this ſublunary Government imitates the great Oeconomy; the nearer to which every Government comes, the more beautiful and ſtable it will be.

CHAP. XLII.

Of Faction and Sedition in the State: the Cauſers and Cauſes of them.

IN every Body, whether Natural, Artificial, or Political, the Beauty, Gracefulneſs, and Uſe of it conſiſts in its Symmetry, Firmneſs and Union. The Fragments of the moſt excellent Statue, the Rubbiſh of the moſt magnificent Pallaces, the crumbled Duſt and Atoms of the Beautifulleſt Bodies, are the Objects of our Pity and Condoling: even ſo ought to be the Diſcords, Factions, and Seditions of a Commonweal, or Kingdom; for by theſe the whole Compages of the Fabrick is diſſolved.

It was the Conſideration of this that made the (a) Orator ſay, That thoſe who delight in Diſcords, in the ſlaughter of their Fellow-Citizens, and a Civil War, neither think their private Hearths, *i. e.* their Properties, the publick Laws, or the Rights of Liberty, dear to them; therefore ought they to be ſpewed out from the Society of rational Men, and to be exterminated out of the Confines of humane Nature.

(a) *Nec privatos focos, nec publicas leges, nec libertatis jura, cara habere poteſt, quem diſcordiæ, quem cædes civium, quem bellum civile delectat: Ideo ex numero hominum ejiciendum, ex finibus humanæ naturæ exterminandum puto.*

Faction and Sedition being a Compoſition of ſeveral miſchievous Ingredients, I ſhall ſingle them out, and give ſhort Characters of them particularly, that the Reader may with more eaſe know their Tendencies.

The Perſons that are apt to be Seditious, are firſt the Debauched, as *Tacitus* excellently obſerves, *Privatim degeneres, in*

1. The debauched Perſons apt to be ſeditious.

Publicum exitioſi, nihil ſpei niſi per diſcordias. Such as give themſelves to Luxury, degenerate from the Virtue of their Anceſtors, are unbridled in their Appetites, live without Rule and Order, have no regard to the Laws that ſhould reſtrain them, where nothing remains but the *inſtrumenta vitiorum*, as the Curious (*b*) Hiſtorian elegantly obſerves of thoſe that in *Galba*'s time were to refund *Nero*'s Donative.

(*b*) *Cum rapaciſſimo cuique & perdiſſimo, non Agri, non Fanus, ſed ſola Inſtrumenta vitiorum manerent.* 1. Hiſtor.

Such having emancipated and withdrawn themſelves from all ſubjection to the Laws of the Soveraign of the Univerſe, no wonder they yield obedience to nothing but the *Impetus* of ſenſual Appetites; and orderly Government curbing theſe, makes it uneaſy to them.

2. Vain and light-headed Perſons.

Secondly, The vain and light Airy headed Perſons are fitted to feather the Seditious Arrows that ſubtiler Heads do faſhion: theſe ruſh into Action without deliberation, weary of things long uſed, rather (*c*) chuſing (for the ſake of Novelty) doubtful and uncertain matters, than ſuch as are the iſſues of ſtay'd Councils. Lampoons, Libels, and Pamphlets are their chief Studies: They traffique moſt at the Bookſellers Stall, they deſire no acquaintance with the ſeriouſer Books of his Shop; the Playhouſe and Coffee-houſes entertain them more than the Church or *Weſtminſter-Hall*. They are brittle Tools, but ſharply edged, where they are to cut Feathers and Chaff: They are not made to work upon Marble, or write Laws in Tables of Stone.

(*c*) *Pro certis & olim partis, nova, ambigua, ancipitia malunt.* Tacit. 11. Hiſtor.

They are the puffing Whirlwinds that raiſe the Duſt, the *Ignes Fatui* that miſlead poor Mortals by a little glaring light. They are the Lapwings that whirle about you, and no ſooner ſtoop at you, as if they would let you know what they meant, but they whisk off again.

3. The Indigent.

Thirdly, The Indigent are fitted in all reſpects for Sedition and Tumults. They are conſcious of their low Eſtates, and hope to better them in the Scramble, according to that of the Poet (*d*),

(*d*) *Lucan, lib.* 1.

Hinc uſura vorax, avidumque in tempora Fœnus,
Et concuſſa fides, & multis utile Bellum.

In the Cities, ſaith (*e*) *Saluſt*, thoſe that have no Riches, envy the Good and Rich; they hate the ancient order of things, and are greedy of change, ſtudying Innovations by the uneaſineſs of their preſent condition, in hopes of bettering themſelves.

(*e*) *In Jugurtha. Semper in civitate, quibus opes nullæ ſunt, bonis invident: vetera odere, nova expetunt; odio ſuarum rerum, omnia mutari ſtudent.*

According to the excellent (*f*) Hiſtorian, Thoſe who have little credit in Peace, are joyful in diſturbance, ſafeſt in uncertainties: for they know, in the condition they are in, they are certainly undone; and adventures may chance to be proſperous to them.

(*f*) *Afflictæ fidei in pace, & rebus turbatis alacres, per incerta tutiſſimi.* Tac. 1. Hiſt.

So the Philoſopher (*g*) obſerves, That thoſe who live intemperately, and conſume what they have, ſtudy Novelties, and either themſelves attain to a Tyrannical Government, or impel others

(*g*) Ὅταν ἀναλώσωσι τὰ ἴδια ζῶντες; ἀσελγῶς, καὶ δὴ οἱ τοιοῦτοι καινοτομεῖν ζητοῦσι. *Lib.* 5. *Polit. c.* 6.

others to exerciſe it; as he inſtanceth in *Dionyſius* among the *Syracuſans*, in the *Hiſparians*, and the *Amphipoli* in *Ægina*: So *Cleotimac* headed the *Chalcedonian* Poor againſt the Rich. So *Tacitus* aſcribes *Sylla*'s boldneſs and undertakings to his Poverty: ſo of *Cataline*, *Saluſt* (*h*) tells us, The Indigent is the moſt at hand uſeful to Men that covet Power; and gives the reaſon, Becauſe their own Fortunes being of ſmall, or no value, the hopes of Reward and Gain makes every thing honeſt to them.

(*h*) *Homini potentiam quærenti, egentiſſimus quiſque opportuniſſimus; cui neque ſua chara, quippe quæ nulla ſunt; omnia cum pretio honeſta videntur.*

So *Cicero* ſpeaking of *Cataline*'s Conſpiracy, tells us, That there were none in *Rome*, or any other corner of *Italy*, who was in Debt, but he was receiv'd into Confederacy, having ſpent profuſely their Patrimony, and debauched their Fortunes; *Patrimonia ſua profuderunt, fortunas ſuas abligurierunt.*

(*i*) *Nemo non Roma, ſed non in ullo Italiæ angulo ære aliquo oppreſſus fuit, quem non ad hoc ſcelus fœdere aſſumerent, &c.* In Catilinam.

So *Plato* (*k*) obſerves ſuch to be Seditious, in hopes, that if they prevail, they may elude their Creditors; ſo *Pericles* is cenſured that he fomented the *Peleponenſian* War againſt his Country, and *Cicero* objects the ſame againſt *Anthony.*

(*k*) *Lib.* 4. *de Rep.*

Tacitus (*l*) ſaith of *Otho*, There was no hopes in Matters compoſed; Hope and Counſel was in the Tumult and Huddle of Affairs; he being luxurious above the State of a Prince, and poor below that of a Private Perſon.

(*l*) *Compoſitis rebus nulla ſpes, omne in turbido conſilium; luxuria etiam Principi oneroſa, inopia vix privato toleranda.* 1. Hiſt.

To which we may annex what the Bleſſed King (*m*) obſerves, That ſome Men thirſt after Novelties, others deſpair to relieve the neceſſities of their Fortunes, or ſatisfie their Ambitions, in peaceable times (diſtruſting Gods Providence as well as their own Merits) were the ſecret (but principal) Impulſives to thoſe popular Commotions. Theſe indeed were the Men, who having glutted themſelves with the ſpoils of the Royal Party, by Aſſeſments they drained all the Wealth of the Freeholders, and were never heard to ſay, *Oh, jam ſatis eſt.*

(*m*) Εἰκὼν Βασιλικὴ.

Theſe are Tools fitted for all Factious Handles and Hafts; and being always ſharp, cut deepeſt with a forceable Hand. *Neceſſitas ad turpe cogit*; nothing is ſo Villainous, that Reward, and the hopes of bettering their Fortunes, will not tempt them to perpetrate.

The Fourth Cauſe of Faction and Sedition, is Ambition. The Philoſopher joyns them to the Covetous, and *Giphanius* calls them the *Peſtes & publicæ fontes Seditionum*, the Plague of a Commonwealth, and the Fountains of Sedition. So *Timon* in *Stobæus* ſaith, ἀπληςίαν καὶ φιλοδοξίαν *omnium malorum & calamitatum* στοιχεῖα *elementa ſunt.*

4. The Ambitious.

Ambitious Perſons are the Touch-wood and Tinder of Sedition; a little Spark inflames them. Ambition is a prime Ingredient in all Factions, leading Men naturally to change the model of all things Civil and Sacred, that is not the product of their Counſel. This excites them to ſeek the removal of ſuch, who enjoy more Honorary or Beneficial places than themſelves. Thoſe (*n*) Honours which they deſpair to enjoy in a compoſed, they judge they may acquire in a diſturbed State.

(*n*) *Honores quos quieta Republica deſperant, perturbata conſequi ſe poſſe arbitrantur.*

(o) Addreſs, *part* 1. *p.* 30.

Theſe (ſaith a late (*o*) *Author*) are generally the Incendiaries which kindle the Fire of Inteſtine War. They are the worſt peſts a People can be Plagued with, having rarely either Religion, Conſcience or Honeſty. If they riſe, they are the worſt companions; they careſs and flatter the People only for their own advantage. If they miſcarry, they leave the poor deluded Vulgar to ſink, and they get the Prey. So that nothing is got by theſe ſort of Men, but much may be loſt. All the People of the World, that have been free, and are not, have been ruined by theſe ſort of Men, except thoſe conquered by Foreigners.

(p) *Aut me amor ſuſcepti negotii fallit, aut nulla unquam Reſpublica, nec major, nec ſanctior, nec bonis exemplis ditior fuit, nec in qua tam ſero avaritia, luxuriaque immigraverit; nec ubi tantus, ac tam diu parſimoniæ & paupertatis bonos fuerit.* Livius Procemio.

It is an high commendation that (*p*) *Livy* gives to the *Roman* Commonweal, That unleſs the love of his undertaken Work might byaſs him, there was never a Commonweal greater, or holier, or richer in good Examples, nor into which ſo late, Avarice and Luxury entred, or where Poverty and Parſimony had ſuch a durable Honour.

But *Saluſt* as truly obſerves, that after they had deſtroyed *Carthage*, *Diſcordia atque Ambitio, & cætera ſecundis rebus oriri ſueta mala, maxime aucta fuere*; Diſcord and Ambition, and the reſt of the Evils that uſually attend Proſperity, were encreaſed. Theſe indeed are the Cankers of Peace and Plenty, as it is uſual in temperate years, that with the abundance of Fruits, ſwarms of Locuſts, Caterpillars, and other miſchievous Inſects encreaſe.

(q) *Gregorius in Regiſtro.*

The Character of an Ambitious Man, in a great (*q*) Author, is, That he is always fearing, always careful leſt he ſay what will diſpleaſe, counterfeiting Humility, Honeſty, Affability, and Bountifulneſs; cringing to all, frequenting Courts of Princes, viſiting the Nobility, obſequious to all, that he may be praiſed of all: But when he hath attained his ends, he is quite another Man, proud and haughty, not (*r*) caring to profit others, but to preſide over them; not ſo much caring to do good in his Office, as to be great, (*s*) *tantum ut noceat cupit eſſe potens.*

(r) *Non curat prodeſſe, ſed gloriatur præeſſe.*

(s) *Senec. Tragœd.*

5. The envious.

Fifthly, the Envious are canker'd Branches in a Commonwealth. Envy (ſaith my (*t*) Lord St. *Albans*) is a gadding Paſſion, walketh the Streets, ſeldom is at home. Thoſe that are Goſſipers, and ſpend their time in carrying News (*u*) betwixt one another, in their Evening Chat, moſtly enviouſly detract from the Fame of others.

(t) Eſſay, *c.* 8. *fol.* 35.

(u) *Non eſt curioſus, quin idem eſt malevolus.*

Men of noble Birth, are noted to be Envious towards new Men when they riſe; for the diſtance is altered, and it is like Deceit in the Eye, when others come on, they think themſelves go back.

Envy is a Diſeaſe, ſpreadeth like Infection upon that which is found, and tainteth it ſo, that when it is once got into a State, it traduceth the beſt (*w*) Actions, and hath this addition to its Miſchief, that it inceſſantly is at work. As the Vulture feeds on Carrion rather than freſher Meats, the Flies ſeek Dung

(w) *Inviſo ſemel Principe ſeu bene ſeu male, facta premunt.* Tacit. 1. Hiſtor.

Dung and rotten Matter: ſo the Envious is always Preying on what is putrid in the Commonweal, of which he is the Scavinger, contaminating the beſt Adminiſtration by his loathſome Blaſting; corroding and eating like a Canker, ever detracting from the preſent (*x*) management, and admiring what is by-paſt. Envy is always working, finding new and new matter to work upon. One Man's higher Place troubles him, anothers greater Endowments, Offices, or popularity; ſo that to the Envious there are no (*y*) Holy days.

(*x*) *Virtutem incolumem odimus, ſublatam ex oculis quærimus invidi.* Horat. lib. 3. Od. 14.

(*y*) *Invidia feſtos dies non agit.*

Sixthly the Diſcontented. They are always unquiet, nothing pleaſeth them, wherein they have not the Share they covet in the Adminiſtration; they are uneaſy to themſelves, to others, and the whole State. 6. The diſcontented.

Diſcontents in the Body Politick, are like to ill humours in the Body natural, which are apt to gather into preternatural heat, and inflame, grow dangerous, and ill-boding, when the cauſes of them are long pent up before they be obſerved, or are really given to Men of great Spirits, and the Multitude.

The diſcontented (ſaith a (*a*) late Author) are the ſillieſt Animals in the World. If the Government hath injured me, I ought to take it as the injuries of the Weather, not to rage and fret at it. Kingdoms and Nations have been ruined by ſuch Fools, who have ever pay'd dear for ſuch revenge, and been buried in the ruines they plucked down about their own Ears. Theſe Malecontents are under the dominion of the ſtrongeſt Paſſions, and are not Maſters of their own Reaſon; which is no part of the Caſe of others, who furniſh them with Brands and Granadoes, without which theſe Gentlemen might poſſibly after a little ſullen rage, have come into their Wits again. But when they ſee their Paſſions are not only pitied or cheriſhed, but applauded; it is a thouſand to one, they never recover out of their diſtemper, or not to be ſure, till they, or the Publick have ſmarted for their folly, and thoſe who have careſſed the deviliſh humor in them.

(*a*) Addreſs, *part* 1. *p.* 35.

Seventhly, Emulous Perſons (who can neither endure equals, or ſuperiours) are great promoters of Factions; for when Men of great or over-weening Parts, ſuch as have been great Commanders, or Miniſters of State, by the interpoſing of others, are obſtructed in the ſole managery of publick Affairs, or any other ways diſobliged, they are egged on to make the oppoſite Faction, and ſo the Commonweal is ſhaken by them: and though this diſcontent begin in ſmaller matters, wherein the State is not ſo much concerned, or the ſubverting of Government is to be feared; yet Ambition ſtepping in, Diſcontent grows to Revenge, and then calls in all the Auxiliaries of Faction; which being rendezvouzed, they are moſt difficultly reformed, before one ſide be Conqueror. And ſo from a few perſonal Diſſatisfactions, proceed thoſe rude Shocks which endanger the whole Government. 7. The emulous.

So

So in *Athens* we read of the æmulous Diſſentions betwixt *Nicias* and *Alcibiades*, *Themiſtocles* and *Ariſtides*, and after of *Demoſthenes* and *Eſchines*, and others; and ſo in *Rome* betwixt *Capio* and *Metellus*, *Scipio Africanus* and *Metellus*, *Gracchus* and *Scipio*, *Pompey* and *Cæſar*: of which I have at large treated in the Chapter of Commonwealths.

(b) *Ægre paſſus, miſcere cuncta, & privata vulnera Reipublicæ malis operire ſtatuit.* Tacitus 1. Hiſtor.

So *Tacitus* ſpeaking of *Cecinna*, who having command of a Legion under *Galba*, being laid aſide, upon an Accuſation that he had miſimployed the Publick Mony to his own uſe; (b) grew Malecontent, and endured it ill, and in the tumultuous times, having got the Soldiers good will, he was buſy to promote all kind of Seditions, deſigning to cover his own Wounds with the miſchiefs to the Commonweal.

8. Popular Men.

Eighthly, The popular Men are Engines fitted for Sedition, if they be not well principled to the Government; for by them the (c) Populace is eaſily and effectually moved, and they give Beginning to the Rage of the People, the reſt being mad by Contagion, and Infection.

(c) *Cauſa atque origo furoris penes Autores, reliqui contagione inſaniunt.* Livius, l. 28.

Theſe having by many good and plauſible Deeds, gained Credit with the *Mobile*, and uſing all their Arts to captivate their affections, can lead and guide them with as much eaſe, as the ſmall Rider doth the bulky Elephant, or the Keeper doth the Rhinoceros, or the Bearward his Bear, by their Rings and Chains. So *Tacitus* gives frequent Examples of ſuch Mens courting the People, and ingratiating themſelves with them, when they needed their Hands to help them to attain their Aims; eſpecially in the Conſpiracy (d) of *Otho* againſt *Galba*, where he tells us, that *Otho* beſides his Feaſting and giving Largeſſes to his Soldiers, was not wanting (even after he had taken Arms) to ſtretch out his Embraces to the People, humbly to ſalute them, give all tokens of intimate affection, and all ſervility, in hopes of obtaining thereby the Rule.

(d) *Nec deerat Otho, protendens manus, adorare vulgum, jacere oſcula & omnia ſerviliter pro dominatione.* Tacit. 1. Hiſtor.

Such popular Men are moſt to be feared, who are like (e) *Antonius*, one of *Veſpaſian*'s great Captains, of whom *Tacitus* ſaith, That to him alone the Soldiers Ears were open; for he had Eloquence, and the Arts of making gentle, and pacifying the Multitude, and had Authority with them.

(e) *Uni Antonio apertæ militum aures, nam & facundia aderat, mulcendique vulgum Artes & Auctoritas.* Tacitus 1. Hiſt.

9. Cunning cloſe Men.

Ninthly, The cunning cloſe Men, who can beſt diſſemble their evil Intentions, are dangerous Ingredients of Faction; ſuch as (f) ſpeak fair and plauſible things of the Government, but in their Boſom, and to their Confidents, and ſecret Friends, are framing Miſchief. Of ſuch, *Livy* ſpeaks, that by little Arts they ſtrow their (g) ways to Credit, that when it is for their purpoſe, they may deceive with ſo much more advantage to their publick or private Deſigns.

(f) *Pulchra loquentes, iidem in pectore prava ſtruant.* Odyſſ. 5.

(g) *Fraus in parvis, fidem ſibi præſtant, ut cum operæ pretium ſit, cum mercede fallant.* Liv. lib. 28.

Theſe are ſuch as ſpeak not openly againſt the Government but can afford it ſome good words; but then you ſhall be ſure they will ſubjoyn ſome ſighing Wiſh, That ſuch or ſuch a thing were amended, or better managed.

Tenthly,

Tenthly, Innovators in Religion are the moſt dangerous of all others, to kindle Factions; their Fire is pretended to be from Heaven, their zeal warmed with a divine breath from the Altar. 10. Innovators in Religion.

Diverſity of Religions (ſaith a late grave (*h*) Writer) cauſe the greateſt Ferment of the People. From hence the Part-taking, and Part-making, ill Will, Hatred, Contentions and Jealouſies ſpring, one Party hoping to riſe, another Party fearing it may be ſo, and ſtriving to pull down or keep down another. (*h*) Addreſs, *part* 1 *p.* 10.

Presbytery, ſaith he, is a State-Faction hatched in Rebellion, and a popular State; the whole Scheme of it adapted to thoſe ends, totally inconſiſtent with Monarchy, and the freedom and liberty of any People that will not be Slaves to the Clergy: and this is not ſo much the Doctrine, as the neceſſary effects of its ill Principles.

Independency ſprung out of it, as luxuriant Suckers from the roots of the Tree; every Miniſter of that perſwaſion, deſiring only to be Head of his own Congregation, advanced the Banner of Toleration, ſo that ſome reckoned one hundred and forty ſeveral Factions and Hereſies; the Seeds and Reliques whereof are ſtill ſcattered among us, ready upon any benign Vote of an Houſe of Commons (as that was about the taking off the Penal Laws, and the Union of Proteſtants) to ſprout out of the Soil they lay covered in. So that a worſe Crop than that of *Cadmus*'s armed men may be expected, when ever any cheriſhing warmth enlivens them.

This too manifeſtly appeared of late, when ſuch as for above twenty years, had lived Separatiſts from the Church eſtabliſhed by Law; yet to be qualified for places of Truſt, Authority or Preferment, and to imploy them to the ruin of the Church and Monarchy, could take the Sacrament, Teſt, *&c.* with all the Formalities required by the Act.

We find none of thoſe Pamphlets that inveigh againſt Arbitrary Government, but they generally are againſt the Church and Monarchy; ſuch as theſe took advantage at the conſternation of the People at the Plague, Fire, and their Plot, to puſh their deſigns forward; which they might do with the greater ſafety, becauſe of the confuſion the People were in. So that the Scourge (which as far as any man can judge) was ſent for the ſins of the former Rebellion, was made by them a means of diſpoſing them to commit the ſame over again, when time and opportunity ſerve, as the ſame Author obſerves. Thus far my Author.

Having under theſe Ten general Heads ranked the ſeveral cauſes of Sedition, I ſhall refer the Reader to the (*i*) Philoſopher and his Commentators, to conſider ſeveral others that are leſs material to my purpoſe; noting only, that he divides the cauſes into ſuch as are real cauſes, and naturally produce ſuch effects in the ill managery of Government, and ſuch as by deſigning men are the pretended cauſes, which are (*i*) *Polit. lib.* 5. *c.* 3. *Giphanii Comment.*

Blinds

Blinds and falſe Colours to muſter the Parties under.

The pretences that Factious and Seditious perſons generally uſe, are, That the Government invades the Property of the People, by illegal impoſitions of burthens upon them; That the Laws and Cuſtoms are altered, There is Innovation in Religion, Unworthy Perſons are advanced, who promote Oppreſſion and Arbitrary Rule.

(k) *Libertas & ſpecioſa nomina prætexuntur, adſtrepit his vulgus.* Tacit. 1. Hiſtor.

Liberty and eaſe (*k*) of the People from ſome preſſures or grievances are pretended. This is the Tabret, and the Horn-pipe to the *Mobile*, this ſets them all on gog. The weather-cock common-man thinks himſelf ſet upon the Spires of Steeples, or the tops of common Halls, though he ſees not a ſpan length before him. He is eaſily (*l*) puffed up with vain hopes of liberty, and when the Factious deſigners have once poſſeſſed the People, that ſuch and ſuch Actions of the Magiſtrates have a tendency to deprive them of their Properties, Priviledges and Liberties, their jealouſies hurry them into all the acts of Rage and Madneſs, which prove ſo fatal to Kingdoms. For when the Rabble (that *bellua multorum Capitum*) once feels their ſtrength, and finds the reigns looſe on their Necks, they are ungovernable, wild and untameable. The hard-mouthed Creature deſpiſeth the Bitt, and caſts the Rider; though it's the incertain Fate to be mouthed by a much greater Oppreſſor that ſo jades them, that they are bleſſed if they may obtain the benefit of their former deſpiſed Maſters rule.

(l) *Leviſſimus quiſque & futuri improvidus ſpe vana tumet.* Id.

The Nurſeries of Sedition.

(m) *Giphan. Comment. in c.* 15. *lib.* 4. *Polit. Ariſt.*

The Nurſeries of Sedition are great and populous Cities, being bodies aggregated of all diſpoſitions. Hence the Philoſopher (*m*) well obſerves, That if the Citizens be rich, they can ſpare time to hear the Orations of the Demagogues, to club in Conſultations and Combinations, and beſtow ſome parts of their wealth to carry on their deſigns. If poor and wanting imployments, they are ready for all evil impreſſions and tumults; they are ready to aſcribe the want of their Trade, and their poverty, to the ill adminiſtration of the Government.

All ſorts make it a relaxation of their toils and cares in the managing their Trades, to refreſh themſelves with occurrences of State; here ſeditious Libels, half whiſpers, falſe News, licentious diſcourſes, jealouſies, murmurings and repinings are forged, to be Repaſt for every Palate; Oglios here of ſeveral kinds are cooked by the Seditious; ſo they ſuck Poyſon with their very racy Liquors; they grow as wiſe as Stateſmen, by drinking Tea and Coffee, and by telling and hearing ſhreds of News. Their Ale and Claret makes their Political heads ſettle affairs of State; and according to their own inclinations, they furniſh their Correſpondents with News by retail, casking them up with their Wares, and the Plague ſpreads into the Country by that means.

(n) *Alii Principum partibus, alii Patriciorum & Factionibus ſtudent.* Tacitus.

Beſides, in this vaſt multitude, it cannot be wondred there ſhould be diverſities of Opinions, as well as Intereſts: Some, and thoſe the wiſeſt, favouring (*n*) their Prince, others the Patriots (as they call them) and ſtudy Factions. Yea the very heads

heads of ſeveral Companies and Societies, often bandy one againſt another by emulations firſt, and after by ſiding into Parties: ſo that it is obſervable, that by their natural proneneſs to Factions, where nothing but Rivers, low and high grounds, have divided the Inhabitants, thoſe local diſtinctions have been ſufficient to diſcriminate them into Parties. So it happened betwixt the Inhabitants of the *Pyræus* and *Athens*, alſo at *Syracuſe* betwixt the City and Cittadel; At *Rome* betwixt the *Cis* and *Trans-Tyberini*. So at (*o*) *Paris* the Inhabitants on one ſide the *Seyne* were for the Faction of *Orleance*, and the other for *Burgundy*; The like we have known between *London* and *Southwark*, and *Weſtminſter* and *London*.

(*o*) *Monſtrelate, lib.* 1.

A judicious (*p*) Author ſaith, A great City is the fitteſt Engine to turn an old Monarchy into a new Commonwealth: and the reaſon is obvious; for Corporations and Cities are ſo many Republicks within a Monarchy, which when by their Combinations in numerous ſwarms they attacque, they much endanger: though being compoſed of the Loyal as well as Factious, after they have found the tyranny of their fellow Citizens, and the difference betwixt the mild Rule of their Princes, and the Arbitrary one of their fellows, they moſtly return to their Senſes and Allegiance again.

(*p*) Humane Prudence.

CHAP. XLIII.

Of the Symptoms and Diagnoſtick ſigns of Sedition and Faction.

THE learned (*a*) *Athanaſius Kircher*, in his curious Book of Sounds tells us, That in *Japan* there is a Bell, which toleth of its own accord, ſo often as great Seditions and Tumults are forming or beginning in the Kingdom. And in *Spain* in a Town called *Vibilla*, in the Dioceſs of *Cæſar Auguſta* (*b*) (*Varius* tells us) there is a Bell which they call Miraculous, for that ſome Months before any miſchief or calamity befalls Chriſtendom, it ſounds by it ſelf without any one that is known to ring it, as in ſeveral calamitous periods he mentions.

(*a*) *Apud Japonios Campana eſt, quæ quoties Regno magnæ inſtant Seditiones Tumultuſque, ſuapte ſponte pulſatur.* Phonarg. lib. 2. ſect. 3. c. 14.

(*b*) *Lib.* 2. *de Faſcinatione, cap.* 14.

As to matter of fact (though atteſted by grave Authors) I ſhall not make any enquiry, whether the Relations be true or not. But if God Almighty had vouchſafed ſuch a vertue to every Pariſh Bell, it might ſuperſede all enquiries into the ſigns of approaching Sedition and Faction: Yet I queſtion whether it would enable Governours to prevent them; for the moſt would be apt to conclude, That as they were by a ſupernatural Power, or from the Deity appointed to be the preſages of Factions and Seditions; ſo they would conclude that God Almighty had

destined such Commotions, and would be the more ready to promote and push them forward.

(c) Essays. Descriptions of the Signs particularly.

Shepherds of People (saith the ingenious (c) Chancellor) had need know the Kalenders of Tempests in the State. There are certain hollow blasts of winds, and secret swellings of Seas that forerun them, and so there are in States.

Hatred.

First, Hatred to the Government is a certain sign of intended Sedition. It is not easie to be conceived, saith *Seneca* (d), how great a Rage may arise when the hatred is over-grown: It is then ready to teem, and the Poison will break forth. Therefore *Cicero* saith, No Government can be lasting, which is much feared, be it grounded or ungrounded: for (e) men naturally hate whom they fear, and whomsoever one hates on such an occasion, he wisheth his destruction.

(b) *Nescis quanta rabies oriatur, ubi supra modum odia creverunt.* De Clementia.

(e) *Quem quisque odit, periisse expetit.* Cic. de Officiis, 2.

Contempt.

Secondly, This secret hatred acquires an efficaciousness by Contempt; for Fear is slow and undaring, but Contempt puts on the Armor: Fear is an extinguisher of an Attempt, and a Prince is in Sanctuary while his Enemies fear: but when a Factious man is emboldened to contemn his Prince, he shaketh off fear, and consequently reverence. This happens most to mild Princes and criminally merciful, by which they do themselves and the (f) publick great harm; liberty is thereby taken of trangressing, and the Reverence of the People is thereby laid aside. (g) While Honour to the Prince lodgeth in the Subjects breasts, the veneration to him daily encreaseth; but when he is once contemned, his Authority and Power sinks in the Socket. For Reverence is that wherewith Princes are girt of God, and when Discords, Quarrels and Factions are carried openly and audaciously, it is a sign that reverence to Government is lost.

(f) *Plebs Reverentiam omnem excutiunt, & licentiam præbent peccandi.* Arist. Polit. lib. 6. c. 4.

(g) *Augetur & crescit quicquid in honore est, deficit & minuit quicquid in contemptu.* Dio in Nerva.

Greedy after News.

In *Tiberius*'s time, when *Julius Florus* headed the *Gallick* Rebellion (h) *Tacitus* gives us an account how the Male-contents at *Rome* received the news of it, whereby we may learn some Symptoms of Seditions. For all things (saith he) done by *Florus* were believed to be worse; many for the hatred they bore to the present management, and out of the desire of changes, even rejoyced in their own dangers.

(h) *Cuncta in majus credita, multi præsentium odio & cupidine mutationis suis quoque periculis lætabantur.* 3. Annal.

Libels.

Thirdly, Other great signs of Troubles and Factions, are holes of Libels and licentious discourses against the State, spreading false News to the disadvantage of it, the often running up and down of such, and the greedy embracing them; for Seditious Tumults and Seditious Fame, are but Brothers and Sisters.

The Presses are pestered with Seditious Pamphlets, deluding, abusing, flatterring, enticing, terrifying, or (l) affrighting, according as they may be serviceable to the Faction they wish for. The Illustrious Saint and Martyr felt the heat, and suffered the scorchings of those Tongues set on fire by Hell, and after of those Pamphlets sparks and flakes which raised that fatal fire in his three Kingdoms: and when the Kings Ministers, his Judges, Officers Civil and Military, were represented in the most odi-

(l) Address, *part* 3.

ous

ous manner that malice could invent, with a thouſand falſe and ridiculous Lies of fear of Popery, and Arbitrary Government (which was, and ever will be, the burden of thoſe *Syrens* Songs) it was eaſie to diſcover the approaching Storm, and an evident Symptom of a diſtempered People on the Tiptoes of Frenzy.

The grave (*m*) Hiſtorian deſcribes ſecret murmurers, and ſpreaders of falſe News, thus, That they begin with ſecret Speeches, as is uſual in matters forbidden; then with wandring Rumours, fitted for the open ears of the moſt unskilful, and then adapted for the turbulent, and thoſe that are deſirous of change. Thus they raiſe their Trumpets till they ſound to Arms, and Onſet.

(*m*) *Occultis primum ſermonibus, ut vetita ſolent; mox vago rumore apud imperitiſſimi cujuſque promptas aures, aut rurſum apud turbidos, eoque nova cupientes.* Tacit. 2. Annal.

Fifthly, Theſe are open contagious Airs, Shafts flying by Night and Day, but they ariſe from the hollow Caverns, where Clubs and Aſſociations ſit brewing of them, and feathering thoſe Bolts. So *Tacitus* (*n*) obſerves of the *Gauls*, In little Conſults they debated Seditious Matters. Where *obiter* we may note, how congenial the Actions of Seditious Perſons are in all Ages; which he further deſcribes in the method of (*o*) *Porcennius* when he excited the Souldiers of *Pannonia* to Rebellion, That by Nightly Conferences, and Evening Clubs, when the better ſort were retired, he gathered the worſt, and ſuch as he could confide in, to work them to his purpoſe, and confederate them to carry on his Deſigns.

Clubs and Conſults.

(*n*) *Per conciliabula & cœtus ſeditioſa diſſerebant.* Lib. 3. Annal.

(*o*) *Nocturnis colloquiis, aut flexo ad veſperum die, delapſis melioribus, deterrimum quemque congregantes.* Idem, 1. Annal.

Sixthly, The Method (*p*) *Otho* took to ſupplant *Galba*, the ſame Judicious Hiſtorian deſcribes thus: That he had practiſed before to get the Favour and good will of the Souldiers, calling them Mates, and Companions, relieving, and being bountiful to them, inſerting now and then complaints, and glancings at *Galba*, with Speeches of doubtful Conſtruction, or what other way he could bethink him, to ſtir up, and alter the Vulgar ſort by diſquieting and affrighting them.

Calumnies.

(*p*) *Studia militum affectaverat, contubernales appellando, alios agnoſcere, quoſdam requirere, pecunia aut gratia juvare: inſerendo querelas & ambiguos de Galba ſermones, quæque alia turbamenta vulgi.* Lib. 1. Hiſtor.

Thus the Deſigners of changes in any State, fit their Diſcourſes to the preſent emergencies of Affairs, and finding any ſorts of grievances to complain of, with *innuendo's* aggravate them, and excite the People to believe that they only are forward to redreſs them.

Seventhly, It is a ſign of a Seditious Spirit, when he is buſie in Calculating the Nativity of a Prince. Therefore *Firmicus* gives it in charge to his Aſtrologer, not to anſwer ſuch Queſtions. *Tertullian* (*q*) tells us, That there is no need that any curiouſly enquire after the health of *Cæſar*, unleſs it be one that meditateth or wiſheth ſomething againſt him, or hopes for ſome advantage after him. So *Tribonius* was ſent into Exile, becauſe he enquired of the *Chaldæans* the end of the Prince. So *Domitian* ſlew *Pompoſian*, becauſe he had the Emperors Nativity, and carried about him the Speeches of Kings and Captains out of *Livy*, and called his Servants by the names of *Mago* and *Hannibal*.

Calculating a Princes Nativity.

(*q*) *Cui opus eſt perſcrutari ſuper Cæſaris ſalute niſi a quo aliquid adverſus eum cogitatur, vel optatur, aut poſt illum ſperatur.* Apologia 35. *Sueton. in Domitiano.*

Although Prophecies, Prodigies, and Prognoſtications are like Mercenary Souldiers, that may be liſted to fight on any ſide; yet every Mans Superſtition interprets them to his own advantage, or according to his wiſhes, hopes or fears. So that when the Deſigners have a mind to make impreſſions of fear on the People, they bring in ſome ill-boding Signs, as Apparitions, raining of Blood, Oxen ſpeaking, Battels in the Air, and ſuch like, to keep the People either in fear of Calamities, or in hopes of more proſperous times by changes: both which would be equal diſturbances to Government.

(r) *Genus hominum potentibus infidum, ſperantibus fallax, quod in Civitate noſtra, & vetabitur ſemper, & retinebitur.* 1. Hiſt.

Tacitus (r) ſpeaking of *Otho*'s confiding in the predictions of the Aſtrologers, tells us, They are a ſort of men unfaithful to the Great, deceitful to the Hopers, which always will be forbid, and always retained.

(s) 2. Annal. ad Chaldæorum promiſſa. *Magorum ſacra, ſomniorum etiam Interpretes impulit, &c. plenam imaginibus domum oſtentat, hortaturque ad luxum & æs alienum, &c. Infernas umbras carminibus eliceret.*

That the *Romans* judged ſuch as gave credit to the *Chaldæan* Promiſes, the Ceremonies of the Magicians, and Interpreters of *Dreams*, to be practicers againſt the State, and guilty of Treaſon; we have a memorable example of *Libo* (s) *Druſus*, of the *Scribonian* Family, whom the Aſtrologers put in mind, that *Pompey* was his Great-Grandfather, *Scribonia*, Wife of *Auguſtus*, his Great Aunt; the *Cæſars* his Couſin Germans; that his Houſe was full of Images and Monuments of his Predeceſſors: then they brought him to Licentious Riot and Debaucheries, and to raiſe Infernal Spirits by Inchantments. And though my Author judge there were ſome of *Tiberius*'s Arts in his Accuſation before the Senate, yet we find he killed himſelf, to avoid the infamy of a Sentence of the Senate; and upon it a Decree was made to expell Aſtrologers and Magicians out of *Italy*.

Facta & de Mathematicis, Magiſque, Italia pellendis Senatus conſulta.

Before I come to treat of the Prognoſticks of the Miſchiefs of Factions, I muſt take notice of two of the certaineſt, moſt demonſtrative, and dangerous ſigns of Faction running up to Seed that can be, and thoſe are Tumultuous Petitioning and Tumults.

The Method the Long Parliament uſed.

Theſe will the better be illuſtrated, both ſeparately and in conjunction, by laying open the Methods the Long Parliament took to effect their deſigns againſt their Gracious King. Firſt, With great ſhew of Compaſſion and Commiſeration for their fellow Subjects ſufferings, they eagerly debate the Grievances, which by a correſpondence betwixt the Members of the Houſe of Commons, and their Friends in the Country, by Petitions, many thouſands ſtrong, were daily repreſented to them, every one ſtriving to be foremoſt in repreſenting, and outſtrip his Neighbour in exaggerating the Grievances (as they called them) that they lay under. In theſe Petitions to the Houſes (but moſtly to the Houſe of Commons) were Bead-rolls of Complaints againſt the oppreſſion of the Subject, both by the Kings Council, Preſident, and Eccleſiaſtical Courts, the Star-Chamber, High Commiſſion Court, the Judges countenancing exorbitant Power, that the Property and Liberty of the

the Subject was invaded by Monopolies, Ship-money, Knighthood-money, *&c.* illegal Sentences in the Star-Chamber, the Innovations of the Biſhops, their ſeverity againſt pious Nonconformiſts, and People of peaceable and tender Conſciences, as they called them; and the baſer ſort of the People were permitted, or rather invited to come to the Parliament-Houſe, to back theſe ſtrong Petitions.

By this Artifice, they expoſed the Government to obloquy and contempt among the People, and raiſed in them a confident Opinion that their only Redreſs was to be hoped from the Parliament, and ſo brought themſelves into a popular eſteem, by ſo much more looſening the Peoples Affections, and Allegiance to the King, by ſo much as they faſter knit the Peoples Hearts and Hands to their Repreſentatives, uſing all their induſtry to make the Subjects believe they were the only Patriots and Liberators.

They paſs Votes conformable to the Petitioners deſire, animate them to ſearch for more, and eſpecially to fix them upon Perſons they were mindful to remove out of places of truſt. Then they begun to impeach ſeveral Miniſters of State, and the Judges, that they might weaken the King in his Councils, and terrifie others into compliance: always taking care to charge the miſdeeds upon the Kings evil Counſellors, magnifying the Kings Natural Goodneſs, and declaring, That if he would conſent to redreſs thoſe Grievances, and to puniſh the Authors, they would make him a richer and more glorious King, than any of his Predeceſſors.

Seditious (*t*) Pamphlets daily came out, and the Printing-Preſs laboured Night and Day to abuſe the King and his Miniſters, and bring the Government, Eccleſiaſtical and Civil, into obloquy. Their Preachers in the mean time, like ſo many Demagogues, plied their buſineſs ſo effectually, blowing the Trumpet as they phraſed it, for the Lord and *Gideon*, that by them the Houſes Intereſt prevailed every where, eſpecially in the Populous City, which was in a manner wholly at the Houſes devotion.

(*t*) Addreſs,

Having removed the Great and Noble Earl of *Strafford* by great Induſtry and Art, and the Midwifery of Tumults, and got themſelves (by as ſtrange an Art as overſight) perpetuated, they ſet themſelves to Remonſtrate; in which they odiouſly recount all the miſcarriages (as they called them) in the Bleſſed Kings Reign, charging him (though covertly) with them, and all the very Misfortunes of his Reign. They revive the Bill againſt the Biſhops ſitting in the Houſe of Lords, which had been rejected, and in a Parliamentary way ought not again to be ſet on foot that Seſſion; the better to effect which, they cauſe the Rabble and their Confederates to menace and aſſault them, and other Loyal Members of the Houſe; they Poſt up ſeveral names of Lords and Commons, who oppoſed their proceedings: and having driven the King, and his whole Family away by moſt

moſt outragious Tumults; they declare their Ordinances to be binding during their ſitting, and aſſume the Power of interpreting, and declaring what was Law; and by all theſe Arts they brought the People, not (*u*) ſo much to joyn with, as to conſpire with them.

(*u*) *Culpæ vel gloriæ ſocii.* Tacit. 3. Hiſt.

Then they pretend a neceſſity of putting the Kingdom into a poſture of defence, to ſecure it againſt Popery, and Arbitrary Government, and the Invaſion of Foreigners, which they pretend were to be brought in to aſſiſt theſe. They ſingle out the moſt confiding and daring in every County to be their Commiſſioners of the Militia; ſo (*w*) much as every one was forwarder in boldneſs, and more hardy, by ſo much the more he was to be confided in, and fitter to keep forward the turbulent work they were about.

(*w*) *Quanto quis audacia promptior, tanto magis fidus, rebuſque motis potior habetur.* Idem, 1. Hiſtor.

Having firſt got the Peoples affections to revere them as their Deliverers, they the more eaſily obtained their Bodies, Armour, and Moneys, and ſo proſecuted a Rebellious War openly; yet with that ſhameful pretence, that they were fighting for the King againſt his Evil-Counſellors, and, amongſt hands, court him with moſt Dethroning Propoſitions: and ſucceſs Crowning their Arms, they wholly deſtroyed that Monarchy they had all along pretended to eſtabliſh upon ſurer foundations for the Honour of the Crown, and benefit of the People, than former Ages had known. Inſtead of which, they made themſelves Maſters of all their Fellow-Subjects, ſeizing their Eſtates, Impriſoning and Murthering their Perſons; altering the eſtabliſhed Eccleſiaſtical Government, and all the fundamental Laws, enriching themſelves, and over-awing the Kingdom by a ſtanding Army.

Thus I have drawn that in Miniture, which was the Tragedy of many Years, and the Subject of numerous Volumes, and I ſhall tack to it ſomething parallel in later Years, to let all Poſterity ſee what a Characteriſtick Mark it is of Turbulent and Factious Inclinations, when Petitions againſt the Will of the Government are violently promoted.

The Act againſt Tumultuous Petitions.

The great miſchief of tumultuous Petitions being conſidered by the Loyal Parliament, upon the late Glorious King's happy Reſtauration, Proviſion was made, that the number of deliverers of Petitions ſhould not exceed ten; that three of the Juſtices of Peace in the County, or the major part of a Grand Jury at an Aſſize, or General Seſſions; or in *London*, the Lord Mayor, Aldermen, and Common-Council have the ordering, and conſent to ſuch Petitions, which ſhall be for alteration of things eſtabliſhed by Law, in Church or State, by way of Petition, Complaint, Remonſtrances, Declaration, or other Addreſs to the King, or either Houſes of Parliament.

It cannot be forgot (in the interval of a later Parliament) how zealous and buſy multitudes were to get Petitions with Hundreds and Thouſands of Hands, to the late King for the ſitting of a Parliament, before the King in his Wiſdom thought fit.

This

This occaſioned the King to iſſue forth a Proclamation againſt tumultuous Petitions, and other Loyal Perſons to expreſs an abhorrence of ſuch Petitions, that would preſs the King to precipitate their Sitting.

Thoſe that petitioned the King for convening of a Parliament, could not but foreſee the ungratefulneſs of ſuch Petitions to the King; yet the Deſigners gave it not over: for they had other Ends. As firſt, to engage Men by their Subſcriptions to be more faſt to them: Secondly to try whether the People might be brought to Tumults: Thirdly to incenſe the People more againſt the Government, if their Petitions were denied: Fourthly to ſhew *in terrorem*, the number of their Adherents: Fifthly, That through every County the confiding and zealous might be known each to other: and Laſtly, that whenever that Parliament ſhould ſit, they might have their Thanks, and by their Numbers the Parliament might be encouraged to proceed in ſuch things as they deſired, knowing hereby the Strength of the Party.

When the Houſe of Commons met, nothing was ſo much clamoured againſt, as the Proceedings upon the late Proclamation; as if all the Liberties of the Subjects of *England* had conſiſted in this. Therefore they vote that it ever hath been the undoubted Right of the Subjects of *England*, to Petition the King, for the Calling, and Sitting of Parliaments, for redreſſing of Grievances; and to traduce ſuch Petitioning, was a violation of Duty; and to repreſent it to his Majeſty as tumultuous, and Seditious, was to betray the Liberty of the Subject, and contribute to the deſign of ſubverting the Legal ancient Conſtitution of the Kingdom, and introducing Arbitrary Power, and ſo a Committee (called of Abhorrence) was appointed to enquire of all ſuch Perſons as had offended againſt the Rights of the Subjects. See the Votes.

This was it that explained their Vote, for all the Controverſy was, Whether a few private Men might agree upon a Petition, then ſend Emiſſaries abroad to procure the Subſcriptions, and then tender them, as it were by their number to affright the King to a Compliance; or that the King (to whom the Execution of the Laws, or ſuſpenſion in ſome meaſure ſurely appertains) might not forbid ſuch Petitions.

They ſingled out Sir *Francis North*, then Lord Chief Juſtice of the Common-Pleas, after Lord Keeper, and Earl of *Guilford*, Sir *George Jefferies*, then Recorder of *London*, now Lord Chancellor, Mr. Juſtice *Withins*, and others, as Subjects of their diſpleaſure, for diſliking, and abhorring the irregular dangerous way of Petitioning. But they received more Luſtre and Regard in the Eyes of their Soveraign, and all Loyal Subjects, by their Cenſure, than they did diſcredit by it. It ſeems worth the while for Perſons that have regard to the quiet and repoſe of the Subject, to the Honour and Eſtabliſhment of the Government, and for the Tranquillity and Liberty of their Poſterity

ſterity to conſider, whether any mortal Man can either produce Precedent or Law to juſtify the Impriſonment of thoſe Gentlemen Abhorrers; of which I have ſpoken ſomething before, in the Chapter of Parliaments.

Of Tumults.

I ſhall now conclude with the laſt and formidableſt ſign of Sedition, *viz.* Tumults, which are but unarmed, and Pen-feathered Rebellion. They have the Mien and Standard of it, only want the Artillery. The fatal black Parliament diſciplined them to be ready at any watch word, and whatever they voted againſt the King or Church, was uſhered in by thouſands of all ſorts, flocking out of the City and Country, braving and threatning all along as they went by *White-Hall*, and ſo in Sholes crowding to the Houſes, promiſing to ſtand by them, and crying out for Juſtice. They were ſo inſolent and rude, that they forced the Merciful King to withdraw from his Pallace, to which he never returned, till they brought him to his Barbarous Tryal and Murther.

That Bleſſed Kings Sence of them can be expreſſed by none ſo emphatically as by himſelf; therefore I ſhall extract ſome of his feeling Expreſſions.

(x) Εικὼν Βασιλικὴ, *c.* 4.

I (x) never thought any thing (except our Sins) more ominouſly preſaging all thoſe miſchiefs which have followed, than theſe Tumults. And this was not a ſhort Fitt or two of an Ague, but a quotidian Feaver, always encreaſing to higher Inflammation, impatient of any Mitigation, reſtraint or remiſſion. Thoſe who had moſt mind to bring forth Confuſion and Ruin, upon Church and State, uſed the Midwifery of Tumults, by which they ripped up with barbarous Cruelty, and forcibly cut out abortive Votes, to crowd in by force, what reaſon would not lead. Some Mens Petulancy was ſuch, as they joyed to ſee their Betters ſhamefully and outragiouſly abuſed. So the Bleſſed King finding they invaded the Honour and Freedom of the two Houſes, and uſed ſuch contemptuous words and Actions againſt him, thought himſelf not bound by his Preſence to provoke them to higher Contempt and Boldneſs. For he ſaith it was an hardineſs beyond Valour to ſet himſelf againſt the breaking in of the Sea; being daily baited with Tumults, he knew not whether their Fury and Diſcontent might not fly ſo high, as to worry him, and tear him to pieces, whom as yet they played but with in their Paws: Therefore thinks himſelf not bound to proſtitute the Majeſty of his Place and Perſon, *&c.* to thoſe who inſult moſt when they have Objects, and opportunity moſt capable of their rudeneſs and petulancy.

Our late gracious Sovereign in later times, when ſome Men were endeavouring to practiſe the ſame Methods, found ſome offers of the like at *Windſor* (a place of all others, in which one would have thought he ſhould have had the moſt Honour for the Benefits he did to that Town by his ſo frequent reſidence) when firſt the Boys, and then the Rabble were ſet on

to

to shout for a Burgess of Parliament, in opposition to a Loyal Person His Majesty favoured, even in his own Presence.

The Prophetick Observation of the Martyred King is worth noting, That he believes the just Avenger of all Disorders, will in time make these Men, and that City, see their Sin in the Glass of their Punishment: which needs no application, but only to desire they would be so just to themselves and their Posterity, as to follow no such Precedents, and that none will encourage such outragious doings.

I shall dismiss this ingrateful Subject with the Description (y) *Tacitus* gives of the mutinous Tumult of *Drusus*'s Soldiers, That the Ring-Leaders when they looked to the multitude with outragious Voices made terrible noises, but viewing *Cæsar*, shrunk again: and of the whole multitude he saith, an uncertain Murmur, an horrible cry, and suddenly a calm, by divers emotions of Mind they feared and did affright.

(y) *Vocibus truculentis strepere, rursum viso Cæsare trepidare. Murmur incertum, atrox clamor & repente quies, diversis animorum motibus, pavebant & terrebant.* 1. Annal.

CHAP. XLIV.

Prognosticks of Sedition and Faction.

Bodinus (a) tells us, That Sedition once kindled, is suddenly fanned, and blown by popular fury into a Flame, which is wont to set all on Fire, ere it can be extinguished.

(a) *Seditio semel accensa, quasi scintilla, impetu populari repente agitatur, ac totum prius inflammari solet, quam extingui possit.* De Repub. c. 4.

The danger therefore of Faction is not to be sleighted, but the Government should be watchful over the least Sparks, which no Man can forbid, or tell whence they may come, or how far they may ravage, when there is a Propensity to Faction. Therefore Governours should not suffer matter of Trouble to be prepared or hatched, but crush the Cockatrice in the Egg, and the Monster in the *Embryo*; especially (b) when the Scars of late Wounds are not healed, or hardned, as after a Civil War, when Factions are most dangerous.

(b) *Ubi Respublica ægra, quæve vix cicatrices, clade intestina acceptas, obduxerit.* Clapm. de Arcanis dominationis, lib. 3. c. 16. When Danger less.

The danger is less, saith my Lord (c) St. *Albans*, when it springs only from the Discontent of the People, being slow of Motion, and the greater sort, of small Strength without the Multitude, can do little; but the danger is greatest, when those of higher Rank wait but for the troubling of the Waters. So *Jupiter* by *Pallas*'s Advice, when the other Gods would have bound him, sent for *Briareus* with his Hundred Hands: an Emblem to show how safe it is for Monarchs to make sure of the Good Will of their People.

(c) Essays.

The motions of the greatest Persons in Government, ought to be as the motion of the Planets, under the *Primum Mobile* (according to the old Opinion, that every of them is carried swiftly by the highest Motion, and slowly by its own.) There-

fore when great Men, in their own particular motion, move violently, *Liberi uſque ut Imperantium meminiſſent*, as *Tacitus* ſpeaks, It is a ſign the Orbs are out of Frame.

When Princes not to make themſelves Parties.

Where Factions are not Combinations againſt the Government, but only private Animoſities betwixt ſome of the Nobility, wherein the Government is not much concerned, there may be ſome allowance for my Lord *Verulam*'s Opinion: That Princes being Common Parents, ſhould not lean to one Party; becauſe a Boat that is overſet by the unequal Weight on one ſide, may carry ſuch Paſſengers in it, as the Prince would not loſe. Therefore to ſtudy ways to piece them, and ſolder up the flaws, is better than to ſide with one, to the Ruin of the other, and ſometimes of themſelves alſo. As we may obſerve in *Henry* the third of *France*, who entred into the League, and it was ſhortly after turned againſt himſelf: which may be a document (ſaith that wiſe Lord) to Kings how they make themſelves a Party; for by that a Prince makes himſelf *unus ex nobis*, which makes an Obligation Paramount to that of Soveraignty. So that a Prince muſt be very cautelous (when he muſt ſide with one Party) which he eſpouſeth, (*d*) leſt he lean upon a ruinous Wall.

(*d*) *In caducam partem ne inclinet.*

But if there be a Party, by whoſe fall the Prince (*e*) likewiſe ſhall be ſure to be ruined, (as in caſe of Factions againſt Government, as I mean in this whole Diſcourſe) it is neceſſary for him ſtrenuouſly to ſupport it. Upon this Conſideration, it ſeems to me, that it ever will be the great Intereſt of the Kings of *England* to defend and ſupport the Epiſcopal Government; for that by fatal Experience it was found, that the overthrow of it was the *Præludium* to the Deſtruction of the Bleſſed King and Monarchy. For although he was a very great Champion of the Church of *England*, as eſtabliſhed by Law; yet he too fatally yielded to take away the Biſhops Votes in Parliament, whereby he loſt a conſiderable Party in the Houſe, that would never have deſerted his Intereſt. So that in this caſe I may apply that of *Galba* (*f*) to his Soldiers, It is manifeſt that undivided or alone, they can neither be Saved, or Periſh, in times when they are attacqued.

(*e*) *Cujus ruina ſe quoque tractura eſt.* Tacitus de Moribus Germ.

When Princes to ſupport one Party.

(*f*) *Manifeſtum eſt neque perire nos, neque ſalvos eſſe niſi una poſſe.* Tacit. 10. Hiſt. p. 195. Edit. Lipſ. 5.

But to return to the Prognoſticks of dangerous Seditions. I ſhall mention ſome that *Tacitus* hath noted and deſcribed: Speaking of the Revolt of the Legions in *Germany*, under *Germanicus* at the Beginning of *Tiberius*'s Reign, he ſaith, Thoſe that looked deeply into the Diſpoſition of the Soldiers, judged it a ſtrong Argument of an unappeaſable Revolt, (*g*) that they were not ſcattered or divided, nor any attempt given by a few; but grew inſolent together, were quiet at once, with ſuch moderation and conſtancy, that one would have thought they had been governed by one Head. For when any Sedition is carried on with ſuch Unanimity, it is a certain Sign that the Poyſon hath a large ſpread, and there are few ſound Parts left.

Unanimity a dangerous Sign.

(*g*) *Id militares animos altius conjectantibus, præcipuum indicium magni atque implacabilis motus, quod neque disjecti, nil paucorum inſtinctu, ſed pariter ardeſcerent, pariter ſilerent; tanta æqualitate & conſtantia, ut regi crederes.* 1. Annal.

The

The Progress (*h*) *Augustus* made to establish the Sovereignty in himself, is the usual Method by which such as intend subverting of Government, may proceed; which, according to the same Author, was, That to ingratiate himself with the People, he contented himself with *Tribunitian* Authority to defend the Common People; that he wound himself into the Favour of the Soldiers, by Gifts; of the People, by Provision of Sustenance; and of all in general, with the sweetness of Ease and Repose; by little and little taking upon him the affairs of the Senate, the Duty of the Magistrates and Laws: and so without the Contradiction of any, he obtained the Empire.

The Methods of Designers.

(*h*) *Ad tuendam plebem Tribunitio Jure contentum; militem donis, populum Annona, cunctos dulcedine otii pellexit. Insurgere paulatim, munia Senatus, Magistratuum, Legum, in se trahere, nullo adversante.* Ibid.

This in *Augustus* was commendable and Politically done, being to alter a Commonweal into a Monarchy, and Wisemen by his method might have foretold his Design. So in Seditious enterprises against Monarchy, the way is to court the People, and insensibly cajole them with the sweetness of Liberty under a Commonwealth, and the heaviness of the Yoak of Monarchy; and having possessed them with this, they have no more to do but to await some critical time or revolution that may suit their Design, as some new Imposition laid, some publick Calamity, the displacing some great Officer, or Death of some great Man, or their Prince: such (*i*) Revolutions being the fittest times for great Attempts, as *Tacitus* speaks of *Otho's* Conspiracy, by *Galba's* Covetousness to the Soldiery, *&c.*

(*i*) *Opportunos magnis conatibus transitus rerum.* 1. Histor.

Concerning *Sejanus* the same Judicious (*k*) Author gives us the Saying of *Drusus*, That the first hopes of attaining Command, or working themselves into Power by Sedition is difficult; but after the Entrance there will not want aids of Council, and assisting Hands. Therefore it is most necessary, that Princes diligently watch the motions of all kind of Seditious aspiring Persons, to prevent their first Entrance upon their Designs, lest they prove afterwards too Powerful.

(*k*) *Primas dominandi spes in arduo, ubi sis ingressus, adesse studia & ministros.* Lib. 4. Annal.

Speedy Suppression most necessary.

In such a State of affairs the Council of (*l*) *Tacitus* is to be followed, That nothing is safer in Seditions, and Civil Discords, than quickness of dispatch, when there is more need of Action than Consultation.

(*l*) *Nihil in civilibus discordiis festinatione tutius, ubi facto magis quam consilio opus.* 1. Hist.

The misfortune is great which happens to the Subjects by Faction and Sedition; for such things once begun, are not in a short time hushed, but the Animosities are durable, and when one (*m*) Party overcomes, yet the Conquered retains his old grudge, and is always catching at opportunities to promote his Interest; and there is rarely (in that Generation at least) a sincere amnesty, and union of Affections. Therefore as Princes by Acts of Pardon endeavour to put all into a State of Unpunishableness, though they cannot into a State of Innocence; so those that have assisted the Seditious Party, ought with a generous Repentance and Fidelity to their Prince, endeavour all their Lives, to be rubbing out those Stains by their Loyalty; For he that (*n*) repents he hath offended, is in the next degree to the Innocent.

The Mischiefs of Faction.

(*m*) *Inter victores victosque nunquam solida fides coalescit.* Idem, 2. Hist.

(*n*) *Quem pœnitet peccasse, pene est innocens.*

It is one of the dangerouſeſt ſigns of a ſtrong and prevailing Faction, when a Prince hath notice and apprehenſion of it; yet either for want of courage, or eaſineſs of temper, to believe better of the Factious than they deſerve, quits his reſolution of oppoſing them at ſome critical time: whereby they finding their Prince to yield to their importunities, in granting ſome one thing he hath declared againſt, readily interpret it a fear in him; and when they have taken him at low water-mark, they flow amain upon him with new and new Floods.

Such Princes thinking to make themſelves eaſie by complying, embarraſs themſelves the more with freſh troubles, ſtrengthen the hands of the Factious, and by deſerting their beſt Counſels and Friends, open their own retrenchments, diſmount their own Artillery, and give ſuch ground to the Factious, as at laſt they are either forced to quit their Throne, or with too late rally'd reſolutions, fight for that Poſt they have ſo ſupinely quitted.

CHAP. XLV.

The Remedies of Faction and Sedition.

AS no Malady in the natural Body can be cured without the knowledg of the proper cauſes; ſo the prevention of the growth of Faction and Sedition unto Rebellion, is beſt effected by ſubſtracting the matter, and taking away the fundamental cauſes of it.

(*a*) *Omne recens malum facile opprimitur, inveteratum fit plerumque robuſtius.* Cicero Philip.

(*b*) *Incipiens, & nondum adulta ſeditio melioribus conciliis ſiectitur.*

Firſt it is to be obſerved, (*a*) That all budding evils are ſooner ſtifled, than thoſe that are not only run up to Seed, but ſuffered to ſhake in a rank Soil. Therefore the Hiſtorian (*b*) ſaith, That young and not grown up Sedition is bent with eaſier Councils. So beginning Ulcers are eaſilier cured, than thoſe that are feſtered to the Bone, or are Callous Fiſtulas.

Sedition is a perſonal Crime; but becauſe it conſiſts in the ſeveral qualifications of the Perſons, I ſhall treat of the Cure in the ſame method as I have of the Cauſers and Cauſes. The ſigns being as ſo many Symptoms, which will require alſo ſome remarks.

1. The Debauched.

Firſt as to the debauched, they are but the *Velites*, the light-armed Vancouriers, there is ſmall danger from them. They grow as Tares in every Country and Age, they are the luxuriant branches of a rank Soil and long peace; They are the Sutlers of the Camp: There is a curſe of peace that brings ſuch weeds, but the Howes of the Laws and Eccleſiaſtical diſcipline will hinder their growth, and eradicate them.

The beſt Antidote againſt the miſchiefs theſe people can bring

bring to the Common-weal, is the Prince's example to put Vice out of faſhion and countenance; for a Prince's Vertue and Piety influenceth much.

No doubt his Majeſtie's great care to forbid and diſcredit all kinds of Vice, will work a greater (*c*) reformation among the diſſolute, than his Laws, and will engage the hearts and affections of all vertuous, ſober and conſiderate Perſons: for as the paſſage among the *Romans* to the Temple of Honour was through that of Vertue; ſo muſt that be to Loyalty and Chriſtianity through Morality.

(*c*) *Hæc conditio Principum, ut quicquid faciant, præcipere videantur.* Quintil. Declam. 2.

Secondly, The light-headed airy Perſons, as they are ſomething a kin to the debauched (the one pleaſing his ſenſual Appetite, and the other feeding the Chimæras of his Brain, as their peculiar Province) ſo they are as little dangerous. The ſuppreſſing Libels and Pamphlets would ſtarve them. But if they wanted them, it is likely they would be worſe imployed; Therefore it is neceſſary in all Governments, to countenance and ſet on work ingenious Perſons, who are well principled to the State, to ridicule the Factious, and feed theſe flutterers of the Air with Canary-ſeed; and they will never fly againſt the wind, or out of their Aviary, but there ſport themſelves with as much variety of hopes, flights and ſhort Notes, as the Birds do; and yet other mortals be as ignorant of the impulſive cauſes, as we are of the motives of the friſks and flutters of thoſe Choriſters of the Air. 2. Light-headed.

However theſe are not to be countenanced and indulged, leſt their wild Notes be imitated, or that airineſs grow too faſhionable, whereby ſolidity and ſtayedneſs be ridicul'd; as we have ſeen it too much in our age, when the Military education made the Schools and Univerſities leſs frequented, and the licentiouſneſs of thoſe times is not yet forgot. So that whereas in one (*d*) Corporation before the War, the Earl of *Arundel* found three Aldermen that uſed their Greek Teſtaments at Church; it may be there are not three in a County that do ſo: and Gentlemen have too much diſuſed the reading of Latin Authors, from whence our Language hath received the greateſt improvement: and yet to cover their unskilfulneſs, many are too prone in this Age to decry the uſe of quotations out of ſuch choice Authors. But this *in tranſitu.*

(*d*) *Pontefract.* Mr. *Wakefield*, Mr. *Hitchin*, Mr. *Skipton* } Ald.

Thirdly, The neceſſitous and indigent (being the Infantry of Faction, and the groſs Body) require the Governments greater circumſpection, to prevent their being arrayed by the Factious Chieftains. 3. The Indigent.

Neceſſitas ad turpe cogit, Robbing and Stealing are their Maſter exploits in times of Peace. Thoſe which will adventure to ſtretch an Halter, will adventure upon Bullets for a ſmall conſtant Salary; and being Mercenary will paſs on either ſide, where the greateſt proſpect of gain is: therefore the Government is to take all poſſible care that Prodigality and Luxury bring not the better ſort to want.

The

The way to enrich a People in general, is to open and well ballance Trade, cheriſh all ſort of Manufacture, baniſh Idleneſs, repreſs waſts and exceſs, improve and husband the Soil, regulate all things vendable, moderate Taxes and Tributes, to invite the Indigent to people new Plantations, or thoſe that are fit for it, to ſerve abroad in Military imployments.

Theſe are ſuch Remedies, as being vigorouſly put in execution, will leave few in want, but ſuch as by their lazineſs will chuſe to freeze on Horſeback, rather than take the pains to go on foot to get them heat.

(e) Eſſays. A Prince that would enrich his Subject (ſaith my (*t*)Lord St. *Albans*) muſt take care that the Treaſure of money in the State, be not gathered into few hands; otherwiſe a State may have a great ſtock and yet ſtarve: Money being like Dung, not uſeful unleſs ſpread.

The beſt Mine above ground is when a Country affords not only the Commodity, but the Manufacture and carriage; for then treble hands are ſet on work. Thence in all projects of cutting Rivers, for the tranſporting of Commodities further within Land, it ought to be well conſidered, whether it be not more profitable, to have many poor men and their Cattle imployed in Land carriage, than by the cheaper way of Water only, to enrich the Tradeſmen, and ſtarve a hundred heads for one.

If the wholſom Laws for ſetting on work, and relieving the Poor by the labour of their own hands, and forcing ſturdy Beggars and idle Vagabonds to work, or be confined to their own Pariſhes, were ſtrictly put in Execution, we ſhould have leſs reaſon to complain of them.

It is true it is not from the poor and lazy that the Government is ſo much in danger; for thoſe are not fitted for Souldiers. It is the ſpirited poor that have ſpirits above their fortunes, or by living above their income, have waſted their Eſtates, that are Inſtruments fit to be made uſe of by the Factious; yet their numbers are not ſo great, but vigilant Magiſtrates may have an eye upon them, and the Government may imploy the ableſt of them in collecting the Revenue. Others may be made inferior Officers in the Militia, and the reſt muſt be left to better husband what they have remaining, and kept in hopes that if they pay due reſpect to the Government, at one time or other they may be provided for: and the Loyal Gentry may find ways to oblige them in their Services; ſo that every one that is fit to be made good uſe of, may by one way or other be ſet to gain a better livelyhood, than they are like to get by ſantring and ſlandring the Government; which if they do, ſome ſevere Animadverſion may amend them, or deter others.

It is not poſſible that the Government can provide for all the Indigent, without ſtrict execution of the Laws. But the care of the Juſtices of Peace, injoyned by the Soveraign, may do much good; however they may keep ſuch from moleſting the Government.

Since

Since therefore that of *Tacitus* is ſo true, That the leaſt provident to prevent future want, build Caſtles in the air, and are big with vain hopes and expectations; their hopes and deſires are to be ſo directed that they may hope for more advantage from their Prince, than from Factious Oppreſſors.

Leviſſimus quiſque & futuri improvidus ſpe vana tumet.

Fourthly, Ambition is ſo near a kin to Nobleneſs, that it ſeems a Nobility and unvulgarneſs it ſelf, being an Inmate only of Souls elevated above the level of the common ſort of mankind.

4. The Ambitious.

Ambitious men are the Field-Officers and Brigadeers of Faction; and by ſo much as they are commonly perſons of Birth and Parts, they the more require a Prince's regard above all other Factious perſons.

If they find (ſaith my Lord St. *Albans*) the way open to their riſing, they are rather buſy than dangerous; but if they be checked and ſtopped, like ill humours they grow Malignant. Theſe (ſaith (*f*) the Chancellor) become firſt ſecretly diſcontented, looking upon men and matters with an evil eye, and are beſt pleaſed when things go backward; and ſo are the worſt Servants of Princes or States.

(*f*) *St. Alban's* Eſſays, c. 36.

Therefore it is good for Princes if they uſe ambitious men, ſo to handle the matter, as they be ſtill progreſſive; which becauſe it cannot be without inconvenience, it is good not to uſe ſuch natures at all: for if they riſe not with their Maſters ſervice, they will take care to make their ſervice fall with them.

There is leſs danger *cæteris paribus*, of ambitious men, if they be of mean Birth, than if Noble; and if they be new raiſed, rather than grown cunning, and fortified in their greatneſs.

It is leſs danger (ſaith the ſame great Chancellor (*g*) whoſe wiſe obſervations on this head I cannot omit) to have an ambitious man ſtirring in buſineſs, than great in dependance. He that ſeeks to be eminent amongſt able men, hath a great task, but ſuch as is ever good for the Publick; but he that plots to be the only figure amongſt Cyphers, is the decay of a whole Age.

(*g*) *Idem.*

Princes may make uſe of Ambitious men in pulling down the greatneſs of any Subject that over-tops, as *Tiberius* uſed *Macro* in pulling down *Sejanus*. Alſo they make uſe of them as Screens in matters of danger and envy: But no man will take that office, unleſs he be a ſeeled Dove, that mounts and mounts, becauſe he cannot ſee about him.

Commanders in Wars, though Ambitious, are uſeful; for their Service diſpenſeth with the reſt: and to take a Souldier without it, is to pull off his Plumes and his Spurs.

Favourites are remedies againſt Ambitious great ones, and they are well corrected alſo, by ballancing them by others as proud as themſelves: but then there muſt be ſome middle Counſellors to keep them ſteddy; for without that Ballaſt the Ship will roll too much. Theſe

Theſe, and ſuch like, may be the cures of Ambitious Men, while they are of the Council of Princes, or Miniſters of State. But when they want Imployment, and are tainted in their Principles, or entertain deſigns of altering the State, or by the unboundedneſs of their aſpirings, aim at the ſole direction of Affairs, and care not what miſchiefs befall their Prince, or Country in the purſuit of their Deſigns; a Prince ſhould look upon them as in the next degree of moſt dangerous Traitors.

In this caſe a Prince hath but two ways, either to ſet wiſe men to work, who can bring them to their Service, and make them ſenſible, that their advantage will be greater by ſtudying the Service of their Prince in conſort with other experienced Stateſmen, than by heading of any Faction againſt the Government; and letting them ſee by the many examples in Hiſtory, how unproſperous it hath been to all that have ſtriven to wreſt Honours and Employments from their Prince, without proportionable Service: That they are not to preſume to be wiſer than the Government: That Kings have long Hands, can reach Malefactors at a great diſtance, and unprovided: how unable they are to vie with Majeſty; and make them ſenſible, that never any durable Renown or Wealth was got by courting the People, in oppoſition to the Prince; and demonſtrate the Juſtneſs of the Government in ſuch Particulars as they moſt quarrel at. And if this will not bring them to their right Senſes, then either ſend them abroad, or give them ſome tickliſh Employment at home, wherein, if their Ambition tempt them to outdo their Commiſſion, they may be run into a *Præmunire*, whereby they may be cruſhed at once.

Still a Prince hath a difficult task how to comport himſelf, to caſt off Miniſters of State, who having been accuſtomed to be very leading, and much credited in Councils, have been imployed in great and weighty Affairs, got themſelves great Eſtates, and Dependences. If ſuch (upon ſome Reaſons the Prince beſt knows to himſelf) be ſoftly to be laid aſide, whereby his Partiſans may be induced to believe, it was for no Guilt, but to make room for others advancement; a Prince is in danger to have his Affairs much obſtructed by them.

For theſe (upon every ill ſucceeding Affair of State after their removal) will ſuggeſt to the People, the evil tendency of it; and they ſhall be ſure to have their repute for Judgment and foreca ſt much valued by the People, becauſe it was ſo once by the Prince: and ſo the vulgar inſtantly credit his Sentiments as Oracles; ſo that he having already acquired an eaſy belief, with the greateſt facility in the World, puts a falſe gloſs upon the Princes beſt deſigned Actions, and retaining his old dependences, they will whiſperingly diſperſe his ſence of things.

Let him then make himſelf heads of the Country Party, and the true Proteſtants (as of late ſome affected to be called) and he is preſently without further labour and induſtry adored as the

the Peoples prime Patriot. Having got Tools enough to work with, ſtill pretending his concern for the Publick weal of the People, and at the ſame time, tacitly inſinuating ſome reflections upon his *Quondam*-fellow Counſellors, depreciating their Wiſdom, and Honeſty, and leaves the application to his Admirers: They will be ſure to aggravate all appearances of Male-Adminiſtration (ſince his laying aſide,) and inſinuate that Affairs have a tendency to oppreſſion of the People, altering Religion, or ſuch like plauſible Subjects; and ſo by little and little the Peoples affections will be eſtranged from their Prince, and ſhall be ſet upon this new Idol, the fallen *Lucifer*.

If the Soveraign upon ſome emergences be neceſſitated to call a Parliament, he ſhall obtain a great, if not a major part of the Members, choſen (according to the Common Peoples byas, he ſhall put upon them) moſt oppoſite to the Kings Intereſt. In ſuch an Aſſembly he ſhall be ſure to have great Intereſt, and under ſome pretences of Grievances of the Subject, render uſeleſs to the Affairs of the Soveraign, and upon its neceſſary diſſolution, improve ſtill his Intereſt, that the ſucceeding Parliament ſhall be as wayward; and by promoting Bills, he knows his Soveraign can neither in Honour or Conſcience aſſent to, ſtill more alienate the Peoples affections from him, till at laſt he get to be ſole Director of ſuch Aſſemblies; having all this while the Wiſdom and cunning to keep himſelf within the compaſs, and reſerve, that for Words or Actions he be not obnoxious to the Laws.

Having obtained this height, he is able to influence the Election of City Magiſtrates, ſecure himſelf by them, and at laſt to form Conſpiracies againſt his Prince; till which time, he being the Idol of the People, is only feared and ſuſpected: but nothing of Traiterous Deſigns being yet pregnantly diſcovered, he runs on his risk till ſome fortunate diſcovery of his deſigns force him to abſcond, and then his whole machinations come to light; and if he eſcape the hand of Juſtice, he is forced to leave his Countrey, and ends his life inglorioufly abroad.

This is the common exit of ſuch, who had much better have offered violence to theſe headſtrong Paſſions, and been content with a quiet retreat, and dieted and phyſicked their virulent Diſtempers with the applications of ſage Counſel, and the Precepts of Judicious Men, finding out the cure for their Diſeaſes in Books, and Solitude; than thus to live in the Pangs and Throes of Ambition, to the diſquiet of their Prince, and the emptying of their Country.

Of ſuch we may not only ſay with (*h*) *Druſus*, That Modeſty muſt be prayed to, that they be content with their Greatneſs; but Juſtice muſt be invoked to prune ſuch luxuriant Branches, as not only overtop and ſhade all the reſt, but ſuck away from them all their Sap and Nouriſhment.

(*h*) *Percandum poſthac modeſtiam ut contentius eſſet.* Tacit. 4. Annal.

(*i*) Οὐδὲ χὴ δικάζειν τὺς τοιύτους πῦ προσήκειν, ἀλλ' ἐν πολεμίᾳ μοίρᾳ κόλάζειν. *Lib.* 2.

In (*i*) *Dio Caſſius* I find it, adviſed, That ſuch Criminals as theſe, that are above the ſtroke of Juſtice, and whom a Prince cannot with ſecurity to himſelf bring to a Publick Trial, ſhould not be arraigned, but as open Enemies inſtantly puniſhed.

So ſome Princes, finding ſuch ſubtle ambitious Men, beyond the reach of their Juſtice, by way of publick Arreſt and Trial by the Law, being ſatisfied in their Conſciences that they were hatching great miſchiefs to their State, and the ſubverſion of their Government, have commanded by their Soveraign Power, execution of them by private hands.

(*k*) Hiſtory of *Hungary*.

So fell Frier (*k*) *George*, newly made Cardinal, for tampering with *Solyman* the magnificent to bring him into *Tranſilvania*, and exclude King *Ferdinand*, by direction from the King to *Caſtald* his General there.

So fell the Duke of *Guiſe*, and the Cardinal of *Burbon*; but this ſort of Juſtiec brought as great miſchiefs afterwards to their Crowns, as they could in probability have ſuſtained by their lives, at leaſt, if the Prince had with watchful overſight ſo timed the Execution, that they had let them live till they had made their Treaſons more manifeſt.

(*l*) *Inauditi atque indefenſi tanquam innocentes perierunt.* 1. Hiſtor.

So *Tacitus* (*l*) ſpeaking of *Galba*'s putting to death *Cingonius Varro*, and *Petronius Turpillianus*, ſaith, That they being not ſuffered to be heard, and defend their Cauſes judicially, periſhed in the repute of Innocents.

Therefore there are other ways more juſt and ſafe for Princes to take with ſo great and ſubtile Criminals. As to toyle them into ſome great errours, give them opportunities to ſhew their ill Conduct and Council, or to do ſomething ungrateful to the People, that they may go out of their places with ſuch a ſcar as will ſtick by them in their retirement, and ſtudy to enjoy a quiet receſs, leſt they be called to an account for what they connived at when they fell; ſo if they can be rendred unuſeful, and of little credit with the People, they will have none to back them in their attempts, but Perſons of ſmall Reaches, and Intereſt; and then for ſmaller Tranſgreſſions they may be called to an account; and if they be conſcious to themſelves of any guilt, they will quit their undertakings, for fear of a ſuddener Cataſtrophe than Oſtraciſm.

If ſuch Ambitious Perſons have gained ſo great Intereſt, that neither by ſetting Spies upon them, or by other Arts their ſecret drift can be ſifted out, then *Ariſtotle*'s Rule is to be obſerved, by compaſſings and windings to remove them, and not to tak all their Power away at once, or to remove them to ſome higher place, where they may have a new Adminiſtration to begin, in which they are not ſo well verſed, or wherein they can do nothing without the Prince and his Councils daily inſpection, and where no dependences are to be gained.

* Καὶν τ δυνάμεως τίνα δοκῇ ὑφαιρεῖν ἐκ ὑφαιρωγῆς, τῦτο δρᾶν, χὴ μὴ πᾶσαν ἀθρόον ἀφαίρεσις τ ἐξουσίαν. 5. *Polit.* c. 11.

(*m*) Κοινὴ ἡ φυλακὴ πάσης μοναρχίας, τὸ μήδενα ποιεῖν ἕνα μεγάν. *Ibid.*

Above all, a Prince is to take care to follow the (*m*) Philoſophers Rule, to make no man too great: for as he ſaith, It is the

the ſafeguard of the Principality to make no one Man great. For *Tacitus* (*n*) well obſerves, It is moſt inconvenient, and dangerous, to have any one more in vogue than the Prince; for if ſuch have not powerful Principles of Loyalty lodged in their breaſts, they have great temptations and opportunities to do Miſchiefs, eſpecially, if after the obtaining great Authority and Power, they are ſenſible of parties-making againſt them. For then, ſelf-preſervation is mixed with their Ambition, and that prompts them to dangerous undertakings, as it did the Earl of *Eſſex*, in Queen *Elizabeth*'s time.

(*n*) *Semper periculoſum, privati hominis nomen ſupra nomen Principis attolli.* Vita Agricolæ.

For as *Dio* (*o*) *Caſſius* notes, Long and laſting Command lifts up mens Spirits, and induceth them to alter Affairs. So the long continued Favours of the Queen, and the great Imployments under her, made that unfortunate Earl impatient to ſee himſelf eclipſed, and whether out of pure envy to the preſent Miniſters of State, or upon greater Deſigns (I enquire not) ſeek to remove at leaſt thoſe with a violent Hand, that he thought were his Enemies: in which attempt he fell worthily under the Severity of the Law, which will allow no Man to expound the goodneſs of his Intentions, when he offers force to his Prince.

(*o*) Αἱ μακρὸ τὲ ἐμὶ καὶ πολὺ χεῤῥιώτεραι ἄρχαι ἐπῄρουσι τὸν Ἔσσεξον πολλῶς, καὶ ἐς νεωτεροποΐαν ἐξάγουσι. *Lib.* 2.

When therefore there is any Neceſſity of State to make any great, (*p*) *Livy's* Rule is to be obſerved, That his Authority be ſhort; for that is Safety to the Liberty of the People, as well as to the Sovereignty of the Prince. So the Lord Lieutenants of *Ireland*, and elſewhere, are not only removable at the King's Pleaſure; but they have not been uſed to be continued long: for more durable Commands too much elevate ambitious Mens *Genius*'s, and gain them great Dependences, who will be apt to own their Honour, and places of Profit, rather to ſuch great Miniſters, than to the King himſelf; whereby if they have a mind to make Innovations, they have Opportunities, and Coadjutors.

(*p*) *Magna libertatis (ac Principatus) cuſtodia, ſi magna imperia, diuturna eſſe non ſinas.* Lib. 4.

Sejanus is a great Example of Ambitious aſpiring, and moſt deſerved, violent, and præcipitate Ruin. *Tacitus* (*q*) gives us his Character thus, That he was of Body able to endure Labour, of Mind bold, in his own Actions ſecret, an Informer againſt others, as proud as flattering, in ſhew Modeſt, but inwardly greedy of Aſpiring: for which Cauſe he uſed ſometimes largeſſes and laviſhing, but more often Induſtry and Diligence; means, ſaith he, dangerous alike, when they are diſſemblingly uſed to win a Kingdom.

(*q*) *Corpus illi laborem tolerans, animus audax, ſui obtegens; in alios criminator, juxta adulator & ſuperbus; palam compoſitus pudor, intus ſumma apiſcendi libido, & ejuſque cauſa modo largitus, & luxus, ſæpius induſtria ac vigilantia haud minus noxiæ, quotiens parando Regno finguntur.* 1. Annal.

This *Sejanus* poiſoned *Druſus*, by corrupting *Livia* his Wife, and practiſed to deſtroy *Agrippina*, and *Germanicus*'s Children, from whom he endeavoured to alienate *Tiberius*'s Mind. He requeſted *Tiberius*, that he might Marry *Livia*, widow of *Druſus*, by which means he thought to get himſelf incorporated into the Royal Family; and having deſtroyed the whole Race of *Germanicus* and *Druſus*, the next Heirs of *Auguſtus*, he might the eaſier have uſurped the Empire in *Tiberius*'s old Age, whom he

had got to retire to *Capræa*, and commit the management of affairs to himſelf.

But for all theſe gradual and high Steps, when he was almoſt at the top of his Ambition, ſnatching the very Diadem, having already got his Image with *Tiberius*'s, decreed by the Senate, to be ſet about the Altars of Clemency and Friendſhip, he was at laſt by *Tiberius*'s Authority, and *Macro's* Diligence, utterly deſtroyed: (r) Though he had ſo overcome *Tiberius* by his Arts, that though he was reſerved to all others, yet to him alone he was cautionleſs and uncovered. For as by his cunning (by which he was alſo circumvented) ſaith *Tacitus*, ſo by the Anger of the Gods to the affairs of *Rome*, with equal miſchiefs to it, he flouriſhed and fell. So *Juvenal* (s) tells us.

(r) *Tiberium variis artibus devinxit, adeo ut obſcurum adverſum alios, ſibi uni incautum inſectumque afficeret.* Id.

(s) *Satyra* 10.

——*Sejanus ducitur unco*
Spectandus, gaudent omnes——
——nam qui nimios optabat honores,
Et nimias poſcebat opes, numeroſa parabat
Excelſæ Turris tabulata, unde altior eſſet
Caſus, & impulſæ præceps immane Ruinæ.

5. The Envious.

Fifthly, The Envious are very carefully to be watched over; they ſecretly ſow the Tares that choak the Fruitful Crop of peaceable Government.

There are ſome Envies that are leſs prejudicial to a State, as being againſt ſome Miniſters of State only, and not againſt the Government; and theſe are ſo natural, that in the calmeſt times they are practiſed: and to prevent this, it is only needful for Princes to take care of the choice of ſuch as they commit matters of publick Adminiſtration to, and that Perſons envied ſo deport themſelves, as they may not deſerve it.

(t) *St. Alban's* Eſſays, *c.* 1. *p.* 33.

Publick Envy (ſaith the Learned (t) Chancellor) is an Oſtraciſm, that Eclipſeth Men when they grow too great, and is a Bridle to great ones to keep them within Bounds.

Id.

Thoſe above others are moſt ſubject to be envied, who carry the greatneſs of their Fortunes in an inſolent, proud, and imperious manner; whereas wiſe Men will rather ſacrifice to Envy in ſuffering themſelves to be croſſed, and overborn in things that do not much concern them. So the carrying greatneſs in a plain and open manner without Arrogance, and Vain-glory, doth demoliſh Envy. Therefore the wiſe ſort of great Perſons ever bring upon the Stage ſomebody, upon whom to derive the Envy, which otherwiſe would fall upon themſelves.

Id.

Perſons of eminent Vertues, when they are advanced, are leſs envied: for their Fortune ſeemeth but due to them, eſpecially if they be of noble Blood, being that much is not added to their Fortune; ſo thoſe advanced by degrees, are leſs envied than thoſe *per ſaltum.*

Id.

Thoſe that have joined with their Honours, great Cares and Perils,

Perils, are rarely envied; for Men think they earn their Honour dearly, and pity them ſometimes, and Pity healeth Envy. Therefore the more ſober ſort of Politick Perſons, in their Greatneſs, are ever bemoaning themſelves, *quanta patimur*! not that they feel it ſo, (though certainly to diſcharge great places honourably, is a vaſt Fatiegue) but to abate the Edge of Envy, as my Lord St. *Albans* wiſely obſerves.

Unworthy Perſons are moſt envied at firſt; whereas Perſons of Worth and Merit, are moſt envied when their Fortunes continue long: for by that time, though their vertue be the ſame, yet it hath not the ſame Luſtre; for freſh Men grow up to ſhade it. *Id.*

Theſe are not the Envies that are ſo perilous to States, for that they are terminated on particular Perſons only; but that Envy which is dangerous to a State, is when it is great upon the Miniſters of State, when the (*u*) Cauſes of it, eſpecially, are ſmall, and the Fear greater than the Feeling; for that ſhews the Envy raiſed upon Deſign, and to be general upon all, or moſt of the Miniſters: and then however it may be diſguiſed, it is upon the State it ſelf.

(*u*) *Dolendi modus, timendi non item.*

It is this kind of Envy that principally forebodes Miſchief, and requires greater Skill and Dexterity in the Prince, and his Miniſters, to avoid the Malignity of the Blaſt of theſe black Souls, and the Sting of ſuch Aſps, Vipers, and Scorpions.

Therefore it is no ſmall Skill to chuſe out ſuch, for publick Negotiations, as will be leſs ſubject to be envied; which in Part may be underſtood by electing thoſe that have Worth, Ability, and Vertue to commend them, and not private Affection or Intereſt only.

Sixthly, The diſcontented are File-leaders of Faction, The beſt foreſight and prevention of Miſchief from them is, that there be no fit Head, that hath Reputation with the diſcontented Party, upon whom they may turn their Eyes. Such are either to be won off, or affronted with ſome other of the ſame Party, that may oppoſe them, and ſo divide the Reputation, and make diſtinct Intereſts among them: for Factions generally ſubdivide, as that of the *Optimates* and *Lucullus* did againſt *Pompey* and *Cæſar*; and when the Senates Authority was pulled down, *Cæſar* and *Pompey* after broke upon one another. So *Antonius* and *Lepidus* againſt *Brutus* and *Caſſius*; and after they were overthrown, *Antonius* and *Auguſtus* divided. So in the late War, the *Preſbyterians* and *Independents* claſhed, till at laſt the Conteſt betwixt them two ſo weakned both, that it much facilitated the Reſtauration of the King. 6. The Diſcontented.

To give moderate Liberty for Grief and Diſcontent to evaporate (ſo it be without too great Inſolence, ſaith a Wiſe Man) (*w*) is ſafe, eſpecially if a Prince noting the Cauſes of Diſcontent, be removing of them inſenſibly, during his Connivence, ſo as he ſeem *aliud agere*; to let them ſee it was not for want of Foreſight, or Good-will, that he ſet not on the Work ſooner, but that he waited the critical time. The

(*w*) *St. Albans*, tit. *Sedition.*

The neglect of this, ſome think, was one of the great miſfortunes of King *Charles* the Firſt's Reign: That his Miniſters (who could not but be ſenſible how univerſal the diſcontent of the People was from the beginning of his Reign; yet ſuffered them fifteen years to be fermenting, and the cauſes not to be inſenſibly removed, till when it was done at laſt, all at once, *Anno* 1640, 1641. the King got no thanks for it, as ſeeming to be favours rather extorted than freely granted. For by the long lodging of diſcontent in the boſom of the People, the humour turned back, made the wound bleed inwardly, and ingendered dangerous Ulcers and malignant Impoſthumes. However it is too apparent (though that was a great overſight) yet the backwardneſs of the Parliaments to afford Supplies, and the deſigners of the Civil Wars, who had been at work all along, were the true Cauſe of thoſe Miſeries, together with the bleſſed Kings Clemency.

Carrying men from hopes to hopes of redreſs (ſo as it be not too tireſome) is one of the beſt Antidotes againſt the poyſon of diſcontentment; and when it ariſeth not ſo much from malice as miſtake, a Prince may reſpite a while the Proſecution, to give ſpace to the evil to repent, and to the good to conſent or be convinced: perhaps a little time will mellow and meliorate humours, *diem forſitan tempuſque ipſum leniturum iras, ſanctitatemque animis allaturam*, as *Livy* judiciouſly obſerves.

(x) *Da malorum pœnitentiæ, bonorum conſenſui ſpacium.* Tacit. 1. Hiſtor.

Yet this is to be admitted with ſome reſtriction: For as *Tacitus* notes, in another caſe of *Valens* Lieutenant to *Vitellius*, That uſing delay in proſecuting the Enemy, to the great danger of his cauſe, he ſpent the time of Action in Conſultation; and then rejecting the extreams of Counſel, he took the middle courſe, which, ſaith he, in caſes of danger and doubt, of all other is the worſt.

(y) *Ipſe inutili contatione, agendi, tempus conſultando conſumpſit; mox utrumque concilium aſpernatus, quod inter ancipitia deterrimum eſt, dum media ſequitur nec auſus eſt ſatis, nec prævidit.* Id. 3. Hiſt.

So in puniſhing Authors of Faction, it is better uſe ſeverity at firſt for a terror, than to ſuffer ſmaller Symptoms of diſcontent to paſs ſo long unrectified, that at laſt they ſprout out with *Hydra's* heads, and grow too numerous to ſuppreſs: for in ſuch caſes all delays are dangerous, end ſoft quiet dealing brings more evil, than hazarding raſhly; as in another caſe about (*a*) *Otho*'s Conſpiracy and the quickneſs of the execution of it, he relates; which might have been prevented, if *Galba* or *Piſo* had well obſerved *Otho's* popularity, and his ingratiating himſelf with the Souldiery, whom *Galba* had diſcontented about the Donative.

(*a*) *Nec contatione opus, ubi pernicioſior fit quies, quam temeritas.* Idem, 1. Hiſt.

7. The Emulous.

Seventhly, The Emulous being ſuch as think themſelves equally capable of their Prince's Truſt and Regard, make great ruptures in a State. Therefore *Tacitus* condemns the Politicks of *Caius Cæſar* (*b*) that divided the Proconſulſhip of *Africk* betwixt the Proconſul and the Legate, giving the latter the Legion: for by parting the Office thus betwixt two, without ſubordination; their charge and points of Commiſſion lying intermingled, and running joyntly together, bred and nouriſhed diſcord

(*b*) *Æquatus inter duos beneficiorum numerus, & mixtis utriuſque mandatis, diſcordia quæſita, auctaque pravo certamine, legatorum jus adolevit, diuturnitate officii, vel quia minoribus major æmulandi cura.* 4. Hiſt.

diſcord and quarrel; and through ſiniſter emulation the Legat *Valerius Feſtus* (who had command of the Legion) murthered *Piſo* the Proconſul of *Africk*. So by the reaſon of that emulous hatred betwixt *Vinius* and *Lucro*, (*c*) *Galba* knew not what Council to follow, and was ruined.

Eighthly, Popular men are to be noted of what Principles they are, and to which of the qualifications of the Factious Perſons they are inclined, or how many of Factious Ingredients are in their compoſition: It is worth the Prince's care (ſaith a great (*d*) Author) to diſcover the inclinations of his Subjects, eſpecially thoſe who over much affect popularity, for their wheedles eaſily twine and hurry the common peoples minds whither they pleaſe, deſpiſing the Government out of a greedy deſire of liberty. 8. Popularity

(*d*) *Operæ pretium eſt diſcernere Iitium animos eoſque tanquam ſuſpectos notare, qui nimium populariter ſtudent: hi enim facile plebis animos quaquaverſum torquent, adrapiunt quodlib ertatis avidi præſentem Rempublicam contemnunt.* Lipſius Polit. Præfat.

If theſe (being covetous) cannot be ſet upon ſome Collections of Taxes and Duties on the Subject, which may be heavy upon them, though laid on by Authority, whereby they may be rendered ingrateful to the people, who often beſtow their ill will upon ſuch; or if they cannot be trapped in ſome eſcapes of their words or actions, whereby fear of puniſhment may make them ſlacken their Sails, leſt they be over-ſet and cannot ride the ſtorm: Or if they be not guilty of ſome great immorality, which being diſcovered, may render them leſs acceptable; it will be neceſſary that the Prince chuſe fit Perſons to make applications to them, by ſuch as have ſome Authority over or with them, and can rectifie any miſchiefs of the intention of the Government, and by dint of reaſon make ſuch out of love with the Contagion of popular breath, to ſuck in the vitabler air of the Court, or by rectifying their Judgments, oblige them to manage the multitude in their duty to their Prince, rather than encourage them in the ſullen Malecontentedneſs of their nature. By ſuch means theſe popular perſons might be made as good Inſtruments as ever they were evil.

For certainly were the generality of people once brought to a ſence, that eſtabliſhed Government is infinitely leſs oppreſſive to them, than when Faction giving it a diſturbance, forceth it to arm for their ſuppreſſion, at the common Peoples charge, they would neither lend an Ear to the pragmatical and idle Perſons, who never are in their Element but when they are ſowing Diſſentions, or making Parties, either in their Pariſhes, (eſpecially in Corporations), or buſying themſelves with Officers of State, which is another kind of buſineſs than their ſhallow underſtandings can apprehend. But the itch of appearing ſome body in the rout, makes them ſcrub upon every log and poſt, rather than loſe the pleaſure of ſpending that little Salt in their Blood.

Ninthly, The cunning cloſe men are either ſuch who are no great lovers of the Government, yet dare ſlily nibble at it, or they are the *Achitophels*. As to the firſt, their ſtrength lyes in the Art of wheedling, ſhrugs and inſinuation, they being 9. Cunning men.

being afraid to ſhow their morphewed Complexion, never put off their Vizard but when they are among their Confidents: which ſhows how little courage they have, unleſs in a Croud, or Tumult, and then they are no longer aſſured than the whole body is ſucceſful. If it come to diſpute and hazard, they are the firſt that fly to their Burrow. They are Moles indeed: But if their walks be once diſcovered, they are eaſily catcht, and are ſo blind they neither know how to avoid the Trap, or their own deſtruction, and when uncaſed are the deſpicableſt of Vermin.

(c) *Privati pertinacia in publicum exitium.* Tacit. 10. *Hiſt.*

The *Achitophels* are preſumed to be of quicker ſence, and nimbler parts, and have always ſome private (c) end that they eagerly purſue, though it be to the ruine of the Publick: yet they have a peculiar ſhort ſightedneſs, in that they neither look back on former Precedents of unſucceſsful attempts of that nature; nor forward to conſider how many contingences may happen, whereby the whole deſign may be diſappointed; or how many and different Engines are to be imployed, to rear that new Frame of Government. So that if any few, that have generouſneſs or honeſty, ſcent the deſign, the whole machine, by the unlooſing of ſome few pins, falls in confuſion, and buries in its rubbiſh the Architects who (d) have no half paces betwixt height and precipice.

(d) *Imperium cupientibus, nihil medium inter ſumma aut præcipitia.* Tacit. 2. Hiſt.

Theſe are preſumed to have plotting heads, and all the wiles of the ſubtileſt Foxes, and not to want courage, reſolution, and conduct; rarely undertaking ſuch deſigns, but when there is ſome general diſcontent, or pretenſions of redreſſing Grievances. Therefore wiſe Princes are to ſubſtract the ſubject matter of their pretences, and to ſet on work able Counterminers, whom they are in ſome publick manner to diſgrace, or diſoblige, whereby they may the eaſilier be admitted into the inmoſt Councils of the *Achitophels*, and by ſecret Intelligence on the one hand advertiſe the Prince of the methods, drift and deſign of thoſe men; and on the other ſide puſh things forward to ſome overt Acts, in which theſe Miners may be ſurprized. During which time the Prince is to encourage, ſtrengthen and impower all who are true to his intereſt; which done, it will be a ſtrange fatality, if he in a little time triumph not over theſe cunning Intriguers.

Tenthly, Innovators in Religion.

A nulla re majus periculum Imperiis & Sceptris, quam ab innovata, & inſidioſe ſimulata Religione. lib. *de una Religione.*

As to Innovators in Religion; it is found by long experience how difficult it is to ſuppreſs them. For though it be true what *Lipſius* ſaith, That danger to Empires happens from nothing more, than from Religion innovated, or treacherouſly diſſembled; yet neither he nor any Prince could yet find a ſufficient means, either to prevent the Ingreſs, or ſtop the ſpreadings of different Modes of Religious worſhip, and of Doctrines that are judged conducible to a more Pious living, when they are not too chargeable or too difficult to be performed. Therefore moſt Princes in *Europe* (whoſe Subjects are numerous of different Religions) conſidering the inconvenience of diſpeopling their Countries, or endangering Civil Wars, countenance one form of Diſcipline, that appears to them the beſt adapted to the conſtitution of their Secular Government, by capacitating only ſuch as adhere to it, to enjoy Offices and Preferments, and permitting others in a private way to enjoy the liberty of their Opinions, ſo as they may not be dangerous to the State. Interdicting publick Orations upon controverted Points; or when they find danger of Seditions by them, retrenching ſome of their privileges to keep them in ſubordination.

Having thus gone through theſe ten particulars, I ſhall ſay ſomething of Libels and Corporations, and ſo cloſe this Chapter.

As

Of Libels.

As to Libels, we find in *Tacitus*, That *Cremutius Cordus* being accuſed that he had commended *Brutus* and *Caſſius* as the laſt of the *Romans*; this was thought to reflect upon *Tiberius*: and in his defence, *Cordus* (*f*) ſaith, That *Livy* had commended *Pompey*, that *Meſſalla Corvinus* had ſpoken honourably of *Caſſius*, that *Catullus* and *Bibaculus*'s Verſes were read, which were ſtuffed with Calumnies againſt *Julius* and *Auguſtus*; yet thoſe Emperors ſuffered them, and left them unpuniſhed, whether with more moderation or wiſdom, he would not determine: For ſuch things being ſlighted, grew ſtale and unregarded; but if the Prince be incenſed againſt them, they take fire faſter.

(*f*) *Ipſe divus Julius, ipſe divus Auguſtus & tulere iſta, & reliquere, haud facile dixerim moderatione magis an ſapientia: namque ſpreta exoleſcunt, ſi iraſcare agnita videntur.*

Such Libels therefore as in a ſlight manner only make ingenious Reflexions upon ſelect Perſons, or attack not the Government enviouſly, and in ſuch a way as the Government is not in danger, may be connived at. But the Authors of malicious witty Libels are principally to be ſought after, as the Trumpets and Kettle-drums that call together the whole Array againſt the Government: And if they cannot be diſpoſſeſſed of that Evil Spirit by gentler means, they are to undergo the ſeverity of the Laws which are made againſt Incendiaries of a Kingdom, which is of more dangerous conſequence than the firing of a Private Man's Habitation.

In the twenty eighth Law of King *Alfred*, entituled, *De folc leaſungum gewyrktum*, Of falſe Rumors or Lies done or told to the People, the Puniſhment was, That his Tongue ſhould be cut out, *bim mon accorf tha Tungan of*, unleſs he redeemed it at the price of his Head.

The danger from theſe Libels are the greater, becauſe (*g*) in times of Faction, and the often Changes of Government, the People being unfixed, fluctuating betwixt Liberty and Licentiouſneſs, ſmall Matters are tranſacted with great Emotions.

(*g*) *In civitate diſcordi, & ob crebras Principum mutationes, inter libertatem & licentiam incerta, parvæ quoque res magnis motibus agebantur.* Tacit. 2. Hiſt.

As to Corporations, they have all of them been endowed with their Privileges by the Grace and Bounty of the Sovereign, from whence all Immunities and Honours do flow. The firſt Inſtitution of them was, no doubt, that Juſtice might be executed in them, for the better governing their numerous Inhabitants; that they might be the Places of Traffick, where the adjacent Country might be ſupplied, and their Neighbours might vend their Growth and Manufacture. And thus being enriched by Commerce, ſeparated from their Country-Neighbours by Honours, Offices, and Liberties; ſomething a Gentiler Education might be expected there, whereby they might be Patterns to their adjoyning Neighbours of good and vertuous Deportment, being exempted from the Juriſdiction of the Juſtices of Peace, and attendance upon Aſſizes, whereby Legal Matters, in order to the neceſſary Adminiſtration of Juſtice, are executed in their Precincts, by their own Members; and many of them (beſides the Privileges to be found at large in the Statutes and Law-Books) have power to chuſe as many to repreſent them in Parliament, as the whole County hath. It would fill a large Volume, to recount the particular Powers and Freedoms have been granted to them by the Royal Favour of the ſucceſſive Kings of *England*, whereby they are erected into little Commonwealths.

Concerning Corporations.

Therefore there is good reaſon, as they may do much good

or harm, and they have all the enriching Streams and Conduits from the Sovereign Spring and Fountain; ſo they ſhould have a ſtrict dependence upon the Sovereign, that they may not employ thoſe great Privileges againſt the Laws and Government; nor the rich pragmatical Magiſtrates, Citizens, and Freemen, animate Factions and Seditions againſt it; or preſume to obtrude their impertinent Advices upon their Sovereign, or by their clamorous Petitions for Redreſs of pretended Grievances, and Male-adminiſtration, or by their Election of Factious Repreſentatives, diſpoſe of the Fate of the Empire, as they did in 1641. by their general Combinations with the then Parliament, which they ſo effectually aſſiſted in their Rebellion.

It is too manifeſt how little Juſtice the two laſt Kings could have in the great *Metropolis*, the King's Imperial Chamber, or in other Corporations, although they had all, leſs or more, received great Inſtances of their Royal Favours and Graces. And tho' the great City, by the late King of Immortal Memory's Royal Munificence, and Princely Care, as much as in him lay, by Act of Parliament, and his own particular Bounty, (after it was ſo fatally reduced to Aſhes) was raiſed into one entire Palace, ſo beautiful and ſplendid, as all People muſt acknowledge it the Eighth Wonder; yet the grateful Returns were unproportionable.

This great City enjoyed as ample and beneficial Privileges as any could wiſh for; and though it be deprived of ſome of them, yet, by the Munificence of our late and preſent Sovereign, it enjoys what is needful for its well governing in ſubordination to the Publick.

Since therefore the Corporations, moſtly, were found to have made ill Returns to their Sovereigns, for all their ſpecial Graces; by a moſt wiſe Council it hath been judged fit to enquire by what Warrant they enjoyed thoſe Privileges, and to recall thoſe Charters, that new ones might be granted, moſtly with Additions of Privileges; only that the Magiſtrates (if they ſhould abuſe their Authority) might be diſplaced at the King's Pleaſure: A moſt neceſſary Reſumption of Power, whereby they might not be in a capacity for the future to give any Diſturbance to the Government.

Elſewhere I have given ſhort Hints of the Practice of former Kings, in vacating the Charters of the great City, and ſhall only add what I find in the moſt Judicious Hiſtorian was done in a like Caſe, by the Senate of *Rome*, in *Tiberius* his Reign.

The Licence (*h*) and Impunities of ordaining Sanctuaries and Privileged Places encreaſed, ſaith my Author, throughout the Cities of *Greece*; the Temples were filled with moſt lewd Bondſlaves; in the ſame were received Debtors againſt their Creditors, and Men guilty of Capital Crimes were protected; neither was there any powerful Authority able to bridle the Sedition of the People: Villanies were protected no leſs than the Ceremonies of the Gods. Therefore it was appointed, That

(*h*) *Crebreſcebat enim Græcas per urbes licentia atque impunitas aſyla ſtatuendi; complebantur templa peſſimis ſervitiorum, eodem ſubſidio obærati adverſus creditores, ſuſpectique capitalium criminum receptabantur: nec ullum ſatis validum Imperium erat coercendis ſeditionibus populi; flagitia hominum, ut Cæremonias Deum protegentes. Igitur placitum ut mitterent civitates Jura, atque Legatos, &c. Magnaque ejus diei ſpecies fuit, quo Senatus majorum beneficia, ſociorum pacta, Regum etiam qui ante vim Romanam valuerant, decreta: Ipſorum numinum Religiones introſpexit libero ut quondam, quod firmaret mutareve.* Tacit. 3. Annal.

That the Cities ſhould ſend their Agents with their Laws. Some, by way of Reſignation of their Charters, freely remitted thoſe things they had falſely uſurped; many did confide in the Antiquity of their Superſtitions, and their Deſerts to the People of *Rome*. The Pomp of that Day (ſaith the Hiſtorian) was great in ſhew: In which the Senate (for *Tiberius* had left the Senate a Shadow of their ancient Eſtate, by ſending the Requeſts of the Provinces to be examined by them) conſidered of the Privileges granted by their Predeceſſors, the Agreements with their Confederates, the Decrees of the Kings, before the Countries became ſubject to the *Romans*, and the Religion of the Gods themſelves, to confirm or alter all.

By which it may appear, to be no new thing, for Sovereigns to enquire into the Privileges of Cities, tho' claimed by Divine Original, as many of thoſe were, from their Gods, or by the Bounties of Princes.

As to Conventicles, the Nurſeries of Seditions, ſince the Laws are obvious by which they may be ſuppreſſed, and that in another Chapter I have treated of them, I ſhall take no further notice of them here; being as unwilling that truly conſcientious mis led People (that endanger not the Government) ſhould be ſeverely puniſhed, as I heartily wiſh they would give no Diſturbance to it.

CHAP. XLVI.

The Preſervatives againſt Faction and Sedition.

THE general Amulets, Preſervatives, and Antidotes againſt the Poiſon and Infection of Faction and Sedition, are a Prince's innate Virtue, his Prudence, Juſtice, Providence, Political Capacity, Wealth, Militia, Fortunateneſs, Fame, and the harmony betwixt him and his Great Councils; of which, in order.

A Prince's Vertue.

As to a Prince's Genuine Virtues, they are many, and where they meet in a Conſtellation, they out-ſhine the Jewels of the Crown. The Majeſty and Awfulneſs of theſe, commands ſometimes where Armies cannot; they win upon all. Nothing (*a*) is more amiable, nothing more univerſally loved and honoured than Virtue: even the fame of it when the Perſon is unknown, gains an applauſe; how much more muſt it be revered in a Crowned head.

(*a*) *Nihil virtute amabilior, quam qui adeptus eſt, ubicunque erit gentium a nobis diligetur.* Cicero l. 1. de Natura Deorum.

Laws do not preſerve all things (ſaith (*b*) *Antiſthenes*) but the Rule of Virtue teacheth every where what is honeſt, and unbecoming. So *Epictetus* compares a Soul, throughly imbued with Virtue, to a Spring of Water, which is always pure, ſweet,

(*b*) *Stobæus, Serm.* 1.

ſweet, plentiful, and endued with no evil quality. Therefore (c) *Charilæus* being asked, Which was the beſt Commonweal; anſwered, That wherein many Citizens ſtrive who ſhall excel in Virtue without Sedition.

(c) *Plutarc. in Lacon.*

As in the Opal the colour of ſeveral precious Stones are found, the ſmaller Fire of the Carbuncle, the ſhining Purple of the Amethyſt, the green Sea of the Smaragd: ſo in a truly Virtuous Prince, all the Sunbeams of Light, Warmth, Beauty, and Celeſtial Influence, for his Peoples cheriſhing, comfort, Glory and Proſperity, are contained.

So the (d) Poet tells us, That it ſhines with unſullied Honours, neither aſſuming, or laying down the Enſigns of Soveraignty, at the ſuffrage of the Populace, having a firmer Baſis than the Fleeting Bubbles of their Breath.

(d) *Intaminatis fulget honoribus; Nec ſumit nec ponit ſecures, Arbitrio popularis auræ.* Horat. Carm. Lib. 5. Od. 2.

Pliny (e) tells *Trajan*, That we learn by experience, That a Prince's own Innocence is his faithfulleſt Guard. By this word I underſtand, not only his gentleneſs in not oppreſſing his Subjects, but the whole complex of Virtue, whereby he is guilty of no enormous Vices, but hath the Soveraignty over his own paſſions, as well as over his Subjects.

(e) *Diſcimus experimento fidiſſimam eſſe cuſtodiam Principis ipſius innocentiam.* Panægyr.

A Prince's Prudence.

As to a Prince's Prudence, I have elſewhere ſpoken at large, and ſhall now add upon ſo copious a Subject, ſome gleanings out of good Authors.

In theſe things, ſaith (f) *Seneca*, Prudence is beſt diſcovered, when by-paſt times are collated, by obſerving the Annals, and Hiſtories of former Ages, by ordering preſent Affairs, according to the beſt Reaſon, and providently forecaſting future effects of preſent Counſels. So a Prince will know how former Seditions have ſprung, and what hath been the cure of them, how parallel the preſent are to by-paſt, and how for the future to provide, That the Roots and Fungs of them be digged up: for foregon (g) deeds give certain inſtructions for the future; former miſcarriages teach ſuch a Prince ſufficient caution.

(f) *Præterita cogita, præſentia ordina, futura provide.* Senec. de Beneficiis.

Tanquam oculus mentis undiquaque luciditſimus.

(g) *Facta præterita, certa documenta dant futuris.*

Other Virtuous Qualifications may be common to the Soveraign, and Subject; but Prudence is his peculiar Province: therefore (h) *Jamblichus* calleth this, The very Prince of Virtues. So when (i) *Archidamus* was commended, that he had overcome the *Arcadians* in Battel; he anſwered, That it had been much better if he had overcome them by Prudence. So *Antiſthenes* (k) ſaith, Prudence is the ſafeſt Wall; it neither falls down, or is betray'd: all Walls, Bulwarks, or other defences by Batteries, Mines, or Treacheries, may be taken; but the determination of a Prudent Prince is inexpugnable. The Counſels and Actions of a Prince, endowed with this Virtue, are never like to have the misfortune of thoſe (l) which are never known to be beſt, till they have paſſed the ſeaſon of being put in execution.

(h) *Stobæus de Prudentia.*
(i) *Plut. in Lacon.*

(k) *Tutiſſimum murum eſſe prudentiam, nec collabitur, nec proditur. Machinis aut ſuffoſſionibus, aut vallorum proditione capiuntur; prudentia autem decreta ſunt inexpugnabilia.* Laert. lib. 6. c. 1.

(l) *Utque evenit in conſiliis infœlicibus, optima viderentur quorum tempus effugerit.* Tacitus 1. Hiſt.

A Prince's Juſtice.

Juſtice in a Prince's Government, and Faith in the Sacred obſervance of their Royal Words, are not to be reckoned among

mong the leſſer Stars, but are the two great Luminaries, without (*m*) which, there would be nothing but Gloomineſs, Tempeſts and Showres: yet, though Juſtice be that Sun, Faith is not to be reputed that Moon, that is changeable as to us, by the interpoſition of the Earth, but as it is in it ſelf always enlightened by the Sun.

(*m*) *Remota Juſtitiâ, quid ſunt Regna, niſi magna latrocinia?* Aug. 4. de Civ. Dei.

Faith is the companion of Juſtice, and that (*n*) ſecret Divinity lodging in a Prince's Breaſt, which muſt needs be reverenced of all: Acts of State, and Power, may alter according to emergencies; but a Prince, that makes the Juſt Laws, and his Promiſes the Standard of his Actions, is ſurely poſſeſſed with that Divine (*o*) Wiſdom which every where is reputed Sacred: for his Subjects have thereby as ſure a foundation to rely upon, as his Laws; for they may be miſ-interpreted by corrupt Judges, but nothing can vitiate, corrupt, or extinguiſh that veſtal Fire which burns in the Breaſt of a Prince, who is the Defender of his Laws and his Faith.

(*n*) *Juſtitiæ conſors, tacitumque in pectore Numen.* Silius Ital.

(*o*) *Sanctiſſimum humani generis bonum.* Senec. Epiſt.

Therefore *Cato Cenſor* tells us, That the *Romans* placed Faith next to *Jupiter* in the Capitol; for that they both are the defenders of Mankind, nothing ſo efficaciouſly preſerving Government in its force, ſtability, and titeneſs, as Juſtice and Faith.

A Prince's Providence.

As to a Prince's Providence, it is a ſure Rampire; for who will rebel againſt him, whom they judge to do all things circumſpectly, and with cunctation? The opinion conceived of ſuch a Prince, (*p*) ſlides into the Souls of Men, ſhaded with admiration, and the Subjects ſoon fall from ſuſpecting to admiring his Conduct: for ſuch a Prince is in his own nature wary, and better pleaſed with cautelous (*q*) Counſel with reaſon, than happy ones by chance, as the great Hiſtorian obſerves.

(*p*) *In animos hominum illabitur admirationis prætextu velata.* Valer. lib. 2. c. 1.

(*q*) *Cunctator natura, & cui cauta conſilia cum ratione, quam fœlicia ex caſu placent.*

A Provident Prince paſſeth vigorouſly, from the beginning of his Affairs, to the end; and diſpoſeth all things with eaſy order (having by his forecaſt removed all difficulties by a foreplotted Chart, and fore-ordained Chain of Cauſes) that certainly will produce their effect. Nothing (*r*) can happen to him new or ſudden, or that he is not provided for; ſo that he is free from the imperfection of thoſe that being ſurpriſed, have no excuſe, but that they had not thought.

(*r*) *Sapienti nihil eſſe novum, aut ſubitum, ut nunquam dicat non putaram.* Laertius, lib. 6. c. 1.

Seneca ſaith, Nothing living is ſo moroſe as man, none to be treated with greater Arts: and *Xenophon* (*s*) tells us, It is eaſier to command all Creatures elſe, than man: Therefore prudent and provident circumſpection is more neceſſary for Princes, than for all conditions of men beſides.

(*s*) Πάντων δὴ ἄλλων ζώων ῥᾷον ἢ ἀνθρώπων ἄρχειν. *Cyropæd. lib.* 1.

This it is that makes them confident, and boldly to undertake any Action, when the deſign is plotted out before, and all Circumſtances meaſured by Scale and Ballance. For as *Thucydides* (*t*) obſerves, When with a negligent confidence any matter is propoſed, in the performance it totters or fails.

(*t*) Μετ' ἀσφαλείας μὲν δοξάζειν, μετὰ λύης δὲ ἐν τῷ ἔργῳ ἐλλείπειν. *Lib.* 1.

Therefore

(u) Ἀνὴρ ἔπω; ἂν εἴη ἄρις Θ· εἰ βουλευόμεν Θ· μὲν ὀκνέω Λ Θ· πᾶν ἐπιλεγόμεν Θ· πέρι τοῦ χρῆμα, ἐν ᾧ τῷ ἔργῳ δεῖται εἶη.

Therefore *Herodotus* (u) rightly deſcribes a provident Perſon, That he is upon that account, the beſt, if in deliberating he prolong time, and be fearful of what may happen; but in Action be confident.

A Prince's Political Capacity.

As to a Prince's Political Capacity, it is a Theme too bulky for this Treatiſe: it conſiſts of all the Wiſdom, Forecaſt, Circumſpection, Adroitneſs and Dexterity a Prince can uſe: not only to obtain a repute of Wiſdom, but alſo to govern his People in difficult times, with ſuch Art, as they may feel they are brought into a ſtate of Tranquillity, when they were wholly deſpairing of arriving at it. Every ordinary Pilot can ſteer the Ship in an open Sea, and freſh Gale; it is Tempeſts, Quick-ſands, and Rocks that require Skill. King *James* the Firſt called it King-craft. It is indeed the Royaleſt of all Arts; and they are the happieſt Princes, who, with a good Conſcience, can beſt uſe it: All the obſervations, through this whole Treatiſe, are but an illuſtration of this Political Skill; which, though collected by a weak Judgment, yet being the obſervations of Wiſe and Learned Men, may I hope not want their uſe.

In thoſe dextrous Hits, his late Majeſty of Glorious Memory, was very fortunate in the Tranſactions with ſome of his Parliaments, and ſtemming thoſe Troubles, too many endeavoured to involve his Reign with. In which none doubts but his preſent Majeſty, (who was *particeps Curarum*) had a great Stroke: when every Period in thoſe turbulent times were ſo ordered, that a Civil War was prevented; ſo that we now reap the Benefit of them in enjoying a Bleſſed Calm (which we hope and pray for, it may continue) after ſo threatning a Storm.

A Prince's Wealth.

(w) Τὸ ἀργύριόν ἐστιν αἷμα καὶ ψυχὴ βροτοῖς. *Comicus Vetus.*

Another primary Prevention of Sedition is for a Prince to be Wealthy. Riches (w) are not unelegantly called the Life and Blood of Mortals. When a private Man is poſſeſſed of them, we obſerve how many he obligeth, what Reſpect is paid him, how eaſily he accompliſheth any thing he undertakes: How much more therefore muſt it be advantageous to a Prince. Obedience is not more generally paid to Shrines than to rich Coffers—*Te columus Regina pecunia.* Thouſands of Hands are ſet on Work, thouſands of contriving Heads conſult the beſt for the Prince's affairs, Millions of Weapons are fitted for his uſe who hath a full Exchequer: Fleets are equipped, (x) and ſcour the Ocean, defending a Prince's Territories, and carrying his Victorious Enſigns into remoteſt Lands, when their Admiral is ballaſted with Silver. When all Engins of Battery fail, the ſtrongeſt City may be reduced by an Aſs laden with Gold.

(x) *Quiſquis habet nummos ſecura navigat aura,*
Fortunamque ſuo temperat arbitrio.
Petronius.

(y) Δεῖ γὰρ οὐ μόνον πρὸς τὰς πολιτικὰς χρήσεις ἱκανὴν ὑπάρχειν, ἀλλὰ καὶ πρὸς τὰς ἔξωθεν κινδύνους. 2. *Polit. c.* 7.

The (y) Philoſopher tells us, It is not only neceſſary to have Wealth, according to *Phaleus*'s Conſtitution, ſuitable to the Extent of the Command; but alſo for the Uſes abroad, to defend the Country againſt the next Neighbours and Strangers.

Above

Above all other means to prevent and ſuppreſs Sedition, the keeping up a ſufficient Force, is the ſecureſt, and moſt efficacious means; for thereby the Perſon, and the Government of the Prince, are ſurely defended. Therefore *Dio* (z) *Caſſius* ſaith, There are two things that maintain, keep, and encreaſe any Government, *viz.* Military Force and Riches.

The neceſſity of a Standing Force.

(z) Δύο τε εἶναι, τὰ τὰς δυναστείας ἐπιδεικνύοντα καὶ φυλάσσοντα, καὶ ἐπαύξοντα στρατιώτας καὶ χρήματα. *Li.* 42.

So (a) *Ariſtotle* tells us, That all forms of Government are ſo to be ordered, that they may have ſufficient Warlike Force. Therefore the keeping in good Diſcipline a competent Force, and having good Guards, are moſt neceſſary for a Prince. So that I think it was but a part of *Tiberius*'s Art of Diſſimulation, when *Togonius* moved, That ſo often as he came into the Senate, twenty Senators armed, ſhould be appointed for his Guard; and he made reply, (b) That his Life was not of that worth, that it ſhould be ſheltered or defended with Arms.

(a) Ἀναγκαῖον τὴν πολιτείαν συνεπάγεσθαι, πρὸς τὴν πολεμικήν. *Polit. lib.* 2. *c.* 7.

(b) *Neque ſibi vitam tanti ut armis tegenda foret.* 6. Annal.

Sloth never preſerves (c) great Empires, but Arms, and Men of Valour; for it is a certain Rule, That in all Countries, where Enemies are wanting abroad, Peace, Riches, and the Factions that they produce, without a Competent Militia, will endanger Civil Wars at home. Therefore a Prince muſt always keep ſubſidiary Forces, to prevent ſuch Miſchiefs; for at one time or other, Seditious Men will be troubling the State, and ſuch times may happen, as *Tacitus* deſcribes in *Otho*'s Inſurrection againſt *Galba*, That ſuch was the diſpoſition of their Minds, that ſome few durſt commit the greateſt Wickedneſs, more willed it, and the moſt, or all, did quietly ſuffer it: whereas by the readineſs of ſtanding Forces, the Prince may top the Poppy Heads, and over-power Inſurrections at their firſt Peeping; and ſo terrify all the reſt, that they may keep their Huts and Cabins.

(c) *Non ignavia magna Imperia contineri, ſed virorum armorumque faciendum certamen.*
Si foris hoſtem non habet, domi inveniet.

(d) *Is habitus animorum fuit, ut peſſimum facinus auderent pauci, plures vellent, omnes paterentur.* 1. Hiſtor.

There is more need for a Prince to have a well diſciplined, competent Force, for that new raiſed Men are not to be relied upon. Beſides (e) many other Proofs of this, we may find one memorable inſtance in *Tacitus*, who tells us, That *Herennius* having in his Camp, certain tumultuary cohorts of the *Belgians*, and a great number of Peaſants, and followers of the Camp, (brave Men, ſaith he, before the danger appears, but in danger pitiful Cowards) as ſoon as *Julius Civilis*'s Army could advance, they were ſoon defeated: and he aſcribes the cauſe of it to the haſty choice of Men to ſupply the Legions.

(e) *Tumultuariæ Belgarum Cohortes, Paganorum lixarumque ignava ſed procax ante periculum manus.*
Subito delectu ſuppletæ Legiones augebantur. 4. Hiſt.

Such new (f) Men make a glittering ſhow at a Muſter, and will brag more than any, of their Courage; but they will ſooner unſheath their Tongues than their Swords: the Slothfulleſt, and thoſe that dare do leaſt with their Hands, being forwardeſt to boaſt of their Exploits.

(f) *Ignaviſſimus quiſque & in periculo minimum auſurus, nimii verbis, linguæ feroces.* Id. 1. Hiſtor.

(g) *Cicero* comparing the Soldiery, and the Gownmen, gives Preference to the Military *Sagum*. For he ſaith, All the Lawyers Study, Induſtry, and Commendation of Pleading, is owing to the ſafe-guard of Warlike Vertue; the one conſults for, and defends

(g) *Pro Muræna.*

defends his Client; the other is exerciſed in the defence of the City, and propagating the Limits of the Empire: and the arts of the long Robe are ſilenced upon the very ſuſpicion of Tumults.

(b) *Nihil neque firmius, neque felicius, neque laudabilius eſt Republica in qua abundant milites. Plurimum enim terroris armorum ſplendor importat.* 2. de Re Milit.

Vegetius (*b*) tells us, That nothing is more firm, more happy, or more commendable, than that Commonwealth which abounds with Soldiers; the brightneſs of their Arms, ſtriking Terror into their Enemies: whereas their ruſtineſs tempts them to be aſſaulted, as being unprepared, and unprovided.

A ſtanding Force (proportionable to the occaſion, and no greater) is as a Nurſery to educate the growing Youth in Feats of Arms, to inure them to Labour, Watchfullneſs, Diſcipline and Courage; for few Princes live their whole time, without ſome occaſion of War, either at home, or abroad.

In this Kingdom the ſtanding Force is not ſo great, as to be oppreſſive, or formidable to the People, and the Militia, being a Portion of the People themſelves, armed by the King's Authority, can never be repined at, by ſuch as are Lovers of their King and Countries Safety. To have them kept in good Diſcipline, by training twice a Year, more carefully and induſtriouſly, would be for the ſafety and ornament of the Government.

(i) St. Alban's Eſſays.

Only it is requiſite that great Care be taken, that the Soldiery be not only skillfully trained, but be exquiſitely (*i*) obedient to their Prince, and the Officers be well aſſur'd, and of good repute, not in the leaſt inclinable to Faction, and Sedition, holding alſo good Correſpondence with other great Men in the State; for the moſt excellent Hiſtorian ſaith, The (*k*) Faith of Soldiers is unſtable, and there wants not danger from them ſingle, much more if they ſhould make any formidable Conjunction.

(k) *Fluxa militum fides & periculum a ſingulis.*

There are infinite Examples how the ſtanding Armies have altered the Government, as in the *Roman* Empire was moſt uſual, the Armies ſetting up one or other, moſtly after *Nero*'s death; ſo that we find ſcarce a Succeſſion of three in many Ages.

A Prince's Fortunateneſs.

As to a Prince's fortunateneſs, it is an happy thing, and much for his Security, that his Subjects have an Opinion of it, or, as we ought to ſpeak, that he is the care of Heaven, and that Divine Providence is his Tutelar. Therefore the great Orator (*l*) ſaith, That to greatneſs and Glory, and the atchieving great things, Fortune divinely ſent, is to be joined; that even to them ſleeping and waking, the Deity is Beneficial, and Victory from Heaven deſcends into their Lap.

(l) *Ad amplitudinem & gloriam & ad res magnas gerendas divinitus adjuncta fortuna — dormientibus dii omnia conficium, & in ſinum iis de cœlo victoria devolat.* Pro Leg. Manl. *Sed te — Nos facimus fortunæ deam, cœloque locamus.*

(*m*) *Ancus Martius* firſt built a Temple to Fortune, in a mans habit, and *Tullus* the King aſcribed all his actions to the guidance of Fortune. So *Pliny* (*n*) tells us, The Image of good Fortune, made by *Praxitiles*, was kept in the Capitol. By all which we may note, how advantagious they thought good luck or fortune to be for the preſervation of the Government; and leſt

(m) *Plut. de Fortuna Rom.*

(n) *Lib.* 36. *c.* 5.

leſt it ſhould forſake them (according to the opinion of that Age, that the Deities lodged in the Statues, as the Souls in the Bodies) they chained the Image, that it might not remove from them.

That is only reputed good Fortune among the common ſort, when Princes (*o*) affairs ſucceed well and according to their wiſhes; and when they are ſo, all ſtrive to ſhow obedience: and when adverſe fortune or evil things happen, all do ſemblably withdraw their Service from their Prince.

(*e*) *Proſperis tuis rebus certaturi ad obſequium; Fortunam adverſam omnes ex æquo detrectabunt.* Tacit. 2. Hiſtor.

It is of this, *Horace* ſo elegantly writes, under the name of Fortune:

Lib. 1. *Od.* 35.

Te Dacus aſper, te profugi Scythæ,
Urbeſque & gentes, & Latium ferox
Regumque matres Barbarorum, &
Purpurei metuunt Tyranni.

Of a Prince's Fame.

To this fortunateneſs, as near akin, I ſubjoyn the fame and good reputation of a Prince; It fans away the Peſtilential air of Factions and Seditions; keeps young even the old age of Princes. So *Tacitus* (*p*) ſaith of *Tiberius* when he grew old, and was retired to *Capræa*, to indulge himſelf, and had contracted much hatred, His affairs rather ſubſiſted by fame than other force; which, if it were true of ſuch a Prince, how much more may it be advantagious to one that hath acquired a good fame upon the conſtant practices of laudable and Princely Actions?

(*p*) *Magis fama quam vi ſtare res ſuas.* 6. Annal.

Therefore the ſame great (*q*) Hiſtorian ſaith, That the Counſels of other Mortals conſiſts, in doing what they may judge conducible to their private Affairs; but the lot of Princes is different: for they muſt direct their principal actions to attain fame, which muſt neceſſarily be that which is commendable and of value.

(*q*) *Cæteris mortalium in eo ſtare conſilia quid ſibi conducere arbitrentur: Principum diverſam eſſe ſortem, quibus præcipua rerum ad famam dirigenda.* 4. Annal.

Yet there lies ſome difficulty in the make of the ſpeaking Trumpet of a Prince's fame; for ſometimes it muſt be fitted to vulgar conception; for they moſtly miſinterpret it, as (*r*) *Thucydides* well notes, That modeſty with them, carries a ſhew of Idleneſs or Cowardiſe, the circumſpect and provident is reputed ſlothful, and whatever is ſuddainly undertaken and haſty, is counted vigorous and manly. Therefore a Prince that expects a good fame and report, muſt ſometimes anticipate expectation in his proceedings, and by ſurpriſe gain a repute of great ſagacity, and in ſome ſeaſons and actions accommodate himſelf to the inclinations of his People, and gratifie them in their deſires. So Queen *Elizabeth* got more money by remitting one Subſidy (thereby gaining the opinion that ſhe would exact no more than was abſolutely neceſſary) than many Princes have got by downright repreſenting the neceſſities of Supplies.

(*r*) Τὸ σῶφρον τῦ ἀνάνδρυ πρόσχημα, καὶ τὸ πρὸς ἅπαν ξυνετὸν ὀκνηρὸν ἄργον· τὸ δ' ἐμπλήκτως ὀξὺ ἀνδρὸς μοι προσπίπτειν. *Lib.* 3.

Laſtly, One of the greateſt preſervatives againſt Faction and Sedition, is when there is a bleſſed Harmony betwixt the Prince

and his great Councils; which when it happeneth otherwiſe, requires great prudence in both: On the Prince's part, ſo to propoſe his demands, as the Equity, Convenience and Juſtice of them may be underſtood; and when he finds they are unreliſhed, and heats are like to ariſe, either to bring ſome new matter upon the Stage, that the former propoſal may inſenſibly be forgot; or by ſome whiles intermiſſion of ſuch great Councils, give reſpit to his own and their ſecond thoughts: and on the great Convention's part, to entertain a reverend opinion of their Prince's Judgment, and with real aſſurances of their Loyalty, humbly and dutifully offer their grave Counſels without exaſperation; ſo that the Prince may demonſtratively know, that they have no other ends in the non-compliance, but the common good of Prince and People.

CHAP. XLVII.

Of Conſpiracies and Treaſons.

I Have hitherto treated of Faction and Sedition, both as they tend to the diſquiet of the Government in general, and as they may influence the Court only, or particular perſons, and ſo we may conſider them marſhalled and diſtinguiſhed, Faction to be the ſiding of Parties, Sedition the drawing them into Tumults; and now I come to Conſpiracies and Treaſon, or Rebellion, as Overt-Acts. The firſt two are the Root and Plant, the latter the prickly heads, and Seeds of thoſe Thiſtles.

Conſpiracy differs from Rebellion, becauſe the one may be managed by a few, and primarily aims at the Aſſaſſinating the Prince, and ſecondarily at the overthrow of the Government; whereas the other armes Multitudes againſt him in hopes to worſt him in open Battle.

Uncovered Hoſtilities, ſaith (*a*) *Tacitus*, may be openly avoided, but Deceit and Treachery are hidden, ſhrouded Armes, and by ſo much the more inevitable. It is not ſo difficult for a ſtrong well prepared man to maſter his open Adverſary, as it is for a valiant and vigilant man to avoid hidden dangers: The Snake may lye in the Graſs he treads on, the Scorpion may ſting him to death in his Bed; a *Felton* or *Raviliack* lodge a Knife in his Boſom, when he (*b*) neither ſuſpects, nor fears, or can avoid it; of which, the great *Cæſar* is a moſt eminent Example.

The condition of Princes, that have Seditious Subjects, is the more hazardous, when guarded, as they think, by their own Inocence, they are too confident of their own Safety. When as (*c*) *Livy* ſaith, the Conſpiracy in part detected, is not believed

(*a*) *Arma aperta palam vites; fraus, & dolus occulta, eaque inevitabilia.* 2. Hiſt.

(*b*) *Multa pericula neque evitare, neque fugere in promptu eſt.* Salluſt. ad Cæſarem.

(*c*) *Quibus de conjuratione comperta non creditur, niſi occiſis.* Lib. 40.

believ'd till perpetrated. A ſingle Arm, or a few Brats, who value not their own lives (as *Seneca* (*d*) elegantly) may be Lord, or Butcher of anothers.

(*d*) *Contempſit omnes ille, qui mortem prius.* Octav. *Quiſquis vitam ſuam contempſit, tui dominus.* Epiſt. 4.

The danger is ſo much the greater when the Conſpirators are many, provided they be equally reſolute. They have many (*e*) Hands, and the Prince but one Life to loſe; even in the Life-guard, and among the Halbardiers Conſpirators may be liſted, if the Officers be not moſt circumſpect to know the Inclinations and Tempers, as well as Faces of the Souldiers.

(*e*) *Multæ illis manus, tibi una cervix.*

The Life of the Prince is ſo valuable a Bleſſing, that no care, foreſight, and circumſpection, can be too much to preſerve it; for by ſuch a death, the happieſt fortune of a great People may be brought into inſtant ruine.

(*f*) *Magni fortunam populi in ruinas agit.*

Againſt theſe kind of Conſpirators, the Clemency, Heroick Virtue, obligingeſt Temper or Piety of a Prince are ſcarce ſufficient Mail. Therefore when ſuch have Factious and Seditious Subjects, it ought to be their ſpecial care, and of all their Miniſters of State, and all their Subjects, to double and treble their diligence, and uſe all their probableſt means, to prevent, and foreſlow it; and generally ſuch rational (*g*) diligent caution will have a proſperous event.

(*g*) *Omnia ſumma ratione geſta etiam fortuna ſequitur.*

It may be uſeful to Princes to conceal the firſt Intelligence of Conſpiracies, till more fully diſcovered; according to that of (*h*) *Tacitus*, That the only remedy againſt Treachery, often is, That they are not underſtood: by which, I ſuppoſe, he means not only pure ignorance of them, but that they mis-ken, and conceal their knowledge of them. Yet in the interim, it is requiſite to have truſty Spies, ſecurely mingled in all ſuſpicious Companies, that as the (*i*) Philoſopher ſaith, It be not concealed from them, whatever his Subjects (eſpecially the Malecontents) ſay or do. This *Cromwell* made one of his Maſter-pieces, and by it prevented many generous deſigns againſt his Perſon and Uſurpation.

(*h*) *Solum ſæpe inſidiarum remedium eſſe, ſi non intelligantur.* 1. Annal.

(*i*) *Conari ne te lateat quid quiſque ſubditorum facit.* 5. Polit. c. 11. *Fas eſt ab hoſte doceri.*

Saluſt obſerves, That of all miſchiefs to a Commonwealth, that of Conſpiracy is the worſt; therefore ſuch (*k*) impious and barbarous Treacheries are to be puniſhed with a ſwift Hand, and Unrelenting Heart; as alſo with the ſevereſt tortures: for as the Orator ſaith, No kind of death can be unjuſt to a Traytor, and a Thief.

(*k*) *Impia proditio celeri pœna vindicanda eſt.* Valer. Lib. 3. c. 6. *Inſidiatori, & latroni, quæ poteſt inferri injuſta nex?*

However in the firſt place, it is convenient, not only that the Prince be ſecured, but that all the ſuſpected be *in arcta & ſalva cuſtodia*, in cloſe and ſafe cuſtody, before a Prince proceeds to Regular Juſtice, according to that of the excellent (*l*) *Tacitus*, To conſult Security before Revenge.

(*l*) *Securitati conſules antequam vindictæ.* 12. Annal.

In detecting Conſpirators, and expoſing them to the hatred of the People, great future ſecurity comes to a Prince; therefore ſtrict examination, bolting out the Truth, undeniable Teſtimony, and a fair open Tryal, render the Conſpirators more odious, and the Prince's Juſtice more conſpicuous, as well as his future ſecurity more permanent. Otherwiſe a Prince

may be calumniated (*m*) That he deſtroyed the innocent for envy or fear. However it may be rationally preſumed, that whoever clandeſtinely whiſpers ſuch things againſt a Prince, may either be reputed a confederate, or wiſher of ſucceſs to ſuch a Conſpiracy.

(*m*) *Crebro vulgi rumore lacerabere, tanquam viros inſontes, ob invidiam aut metum, extinxeris.* 15. Annal.

It is to be conſidered, that it is natural to the Common People, to have a Commiſeration of thoſe when they ſuffer, whom they have purſued with the direſt imprecations to the Scaffold. It is the cuſtom of the vulgar, changeable on ſudden occaſions, to be as prone to pity as they were immeaſurable in Cruelty, as the excellent (*n*) Hiſtorian obſerves in *Coſſus*'s appeaſing the Souldiers, who were enraged againſt the *Helvetians*.

(*n*) *Eſt mos vulgo mutabili, ſubita, & tam prono in miſericordiam quam immodicum ſævitia fuerit.* 1. Hiſt.

It were indeed much better (if the ſafety of the Government would ſuffer it) to heal the vitious (*o*) parts, rather than cut them off; but it's a moſt certain Rule of the ſame (*p*) Orator, That the ſentencing of Criminals, ſhould not relate to him that puniſheth, but to the profit of the Commonweal; that is, not to be ſo ordered, as the Prince ſhould be judged to conſult only his own Revenge or ſafety, but the Peace, Tranquillity, and Proſperity of his People.

(*o*) *Melius fanare vitioſis partes, quam exſecare.* 2. ad Attic. Ep. 5.

(*p*) *Omnis animadverſio, non ad ejus qui punit aliquem, ſed ad Reipublicæ utilitatem referenda.* 2. de Offic.

Therefore the excellent (*q*) *Seneca* ſaith, It becomes not Princes to chaſtiſe only, that the guilty may periſh, but that others may be affrighted from periſhing. For it is a *ferina rabies*, ſaith he, to rejoice in Blood and Wounds. Hence all good Princes unwillingly, and with great torment to themſelves, inflict Capital Puniſhments; nor is execution in moſt caſes performed while the Prince's Wrath, and Rage, (how juſt ſoever) is upon him; becauſe that Mediocrity then cannot be obſerved, which ought to be, betwixt much and little; therefore all Puniſhments are moſt kindly that are *more patrio*, leſt that Sarcaſm of (*r*) *Seneca* be verified, Though the cauſe of puniſhment be great, yet a Mean or Meaſure is not obſerved.

(*q*) *Non tam ut ipſi pereant, quam ut alios a pereundo deterreant.* 1. de Ira.

(*r*) *Qui puniendi cauſam habent, modum non habent.* 2. de Clem.

So *Tacitus* inſtructs us, That though it be againſt the guilty, and ſuch as deſerve to be extream examples; yet a Prince ſhould have mercy, not ſo much for the profit of the Republick, but that multitudes ſhould not be conſumed, for the cruelty of one, as the People in an overglutting revenge will be apt to cenſure.

Therefore caution ſhould be uſed, that the puniſhment be not overſpreading, as to Heads of many Families, leſt if they be illuſtrious, and of great Intereſt, the Prince attract more Enemies, and as the Latin Philoſopher (*s*) ſaith, The Parents, Children, Kinſmen, and Friends of the ſlain ſucceed in their places, to meditate revenge, if there be any hopes of ſucceſs by it. Such an *Hydra* eſpecially is deſpairing Rebellion. Yea, though in *China*, *Japan*, and other of the Eaſtern Countries, whole Families are commonly extirpated for the crime of one, yet no Civiliſed Nations imitate it, no not when Rebellion proves moſt formidable.

(*s*) *Parentes liberique eorum qui interfecti ſunt, & propinqui, & amici in locum ſingulorum ſuccedunt.* 2. de Clementia.

If

If an illuſtrious Perſon be in the Conſpiracy, to whom a Prince and his Subjects have been oblig'd (if it may ſafely be done) the puniſhment may be (*t*) attempered, if the Crime cannot be pardoned. So *Livia* told *Auguſtus*, That the Criminal being ſecured, cannot hurt, but in his Pardon the Prince might augment his Fame: as King *James* the Firſt did to the Lord *Colhar*, and his Companions, when he concealed the diſcovery of their Pardon, till the Priſoners were upon the Scaffold, and expected nothing but the laſt ſtroke of the terrible Axe.

(*t*) *Pœnam, ſi tuto poteris, donabis; ſin minus, temperabis.* 1. de Clem.

As Phyſicians in Blood-letting and purging (if in ſo great a Theme ſo low an example may be uſed) with the bad humours, muſt neceſſarily evacuate ſome of the good: So in Conſpiracies and Rebellions, ſome may not be ſo maliciouſly inclined in their own natures, but by their popular (*u*) temper, or eaſineſs to be ſeduced, be careſſed to be partakers in ſome pretended reformations, the black Arts and Deſigns being hid from them, and ſo be made properties. If therefore the Prince can be ſecured, that either, in their own natures, they are not prone to Rebellion, or while they are alive, they can never expect to head parties again; Baniſhment may be ſufficient puniſhment for them.

(*u*) *Facile ſtudia vulgi ad ſe trahunt, vel inviti.*

So when, in *Nero*'s (*w*) time, upon the appearing of a Comet, it was bruited that it portended the change of a King, and Rebellious *Plautus* was celebrated as the Perſon: *Nero* writ Letters to *Plautus*, That he ſhould conſult his own good, and withdraw himſelf from the Rabbles defaming of him to his prejudice; and having Poſſeſſions in *Aſia*, he might enjoy his blooming Years, undiſturbed, and in ſafety. Which was moſt humanly done, for by that he ſpared *Plautus*, and yet provided for the quiet of the Commonwealth.

(*w*) *Ut conſuleret ſibi, & turbis, ſeque prave defamantibus ſubtraheret. Eſſe illi per Aſiam agros, in quibus & tuta & inturbida juventa frueretur.* Tacit. 14. Annal.

But as the merciful temper of a Prince in ſome caſes is moſt Chriſtian and Prudent; ſo in others, too much Clemency may encourage Sedition, and conſequently Treaſon. For as the Orator (*x*) ſaith, The hopes of eſcaping puniſhment is the greateſt allurement to do evil, a wicked Subject fearing that Prince (*y*) little, who wears a Padlock on his Sword.

(*x*) *Maxima illecebra peccandi impunitatis ſpes.* Pro Milone.

(*y*) *Apud quem conditum, imo conſtrictum eſt ferrum.* Seneca.

There are few that eſchew evil for the Turpitude of it, but for the fear of puniſhment: therefore in ſuch dangerous matters as Conſpiracies, and Rebellion, the edge of the Prince's Sword is always to be ſharp: and the Council of *Tiberius* (*z*) in his Epiſtle to the Senate is to be followed, That the corrupt and the corruptor, the ſick and burning Soul, is ſcarce to be quenched with milder remedies, than ſuch as bear proportion to the luſts it burns with, of what kind ſoever it be.

(*z*) *Corruptus ſimul, & corruptor, æger & flagrans animus, haud lenioribus remediis reſtinguendus eſt, quam libidinibus ardeſcit.* 3. Annal.

The puniſhment of a few wicked Perſons reſtrains the malevolent effects of many, as *Cicero* (*a*) notes: Nor, ſaith (*b*) *Tacitus*, is there any other remedy of glowing Diſcord, than that one or other of the moſt forward be orewhelmed, and exemplary Juſtice be executed upon them. Though the Gangreen begin but

(*a*) *Unius improbi ſupplicio, multorum improbitates coercere.* 3. in Verrem.

(*b*) *Neque aliud gliſcentis diſcordiæ remedium, quam ſi unus alterve, maxime prompti, ſubverterentur.* Tacit. 4. Annal.

but in in a Toe or Finger; yet it may require Amputation, leſt a Leg or an Arm be in danger: ſo the skillful Gardiner prunes his cankered Branches more ſpeedily than the luxuriant.

(c) *Rerum atrocium miniſtros, veluti piaculares publici odii.*

By puniſhing the Adviſers, Fomenters, and Actors of horrid things (as purging Sacrifice (c) of publick Hatred) atonement is made to publick Juſtice, and the leſs criminal have the greater Obligations to dutiful Repentance; for the Puniſhment of ſuch Ring-leaders and *Coryphæi*, is not ſo much the revenge of the Prince as of the Commonwealth. Otherwiſe the Prince by (d) ſparing a few Wretches, will be Prodigal of his better Subjects Blood, which thoſe Criminals would, as ſoon as they had obtained Power, more profuſely ſhed.

(d) *Ne ſanguinem noſtram largeas, dum paucis ſceleratis parcis, bonos omnes proditum eas.* Salluſt. in Catilinam.

(e) *Tanquam ad clarum & beneficum ſidus certatim advolare, objicere pro illo mucronibus inſidiatorum paratiſſimi.* De Clem. lib. 1. c. 3.

Therefore it becomes all good Subjects to beſtir themſelves for the ſafety of the Prince, to haſten, ſaith (e) *Seneca*, to his Standard, eſteeming him as a luminous and beneficial Conſtellation, and moſt ready for his ſafety, to expoſe themſelves betwixt the Traytors unſheathed Swords, and his Royal Perſon.

I cannot more emphatically expreſs the clemency of our Princes, and their Laws againſt Treaſon, or better diſcover the Limits and Bounds of Puniſhments, and the deſire that our Princes have had, That none ſhould fall under the guilt of Treaſon, than by reciting the Preambles to the Statutes, made in King *Edward* the Sixth's, and Queen *Marys* time, concerning Treaſons.

(f) 10 *Ed.* 6. *c.* 12.

The words of the Statute of King *Edward* (f) the Sixth, are, Nothing being more Godly, more ſure, more to be wiſhed and deſired, betwixt a Prince, the Supream Head and Ruler, and the Subjects whoſe Governour and Head he is, than on the Prince's Part great Clemency and Indulgence, and rather too much forgiveneſs, and remiſsneſs of his Royal Power, and juſt Puniſhment, than exact Severity and Juſtice to be ſhowed: and on the Subjects part, That they ſhould obey rather for love, than for fear of his ſtrait and ſevere Laws: yet ſuch Events ſometimes happen in the Commonwealth, that it is neceſſary and expedient, for the repreſſing of the Inſolence and unrulineſs of Men, and foreſeeing, and providing Remedies againſt Rebellion, Inſurrection, or ſuch miſchiefs, that ſharper Laws, and an harder Bridle ſhould be made, to ſtay thoſe Men, that might elſe be occaſion, cauſe, and Authors of farther Inconvenience.

That as in Tempeſt, or Winter, a coarſe Garment is convenient; in calm or warm Weather, a more liberal, rare, or lighter Garment, both may, and ought to be followed and uſed: So that ſometimes there have been occaſion at divers Parliaments, to make and enact certain Laws and Statutes, which might ſeem and appear to Men of exteriour Realms, and the Subject, very ſtrait, ſore, extream and terrible; although they were then, when they were made, not without great Conſideration and Policy moved and eſtabliſhed, and for the times,

to

to the avoidance of further inconvenience, very expedient and neceſſary; and when Princes are more indulgent, it is to provoke the Subject, with Clemency ſhewed on the Prince's behalf, to more love and kindneſs to him, and upon Truſt they will not abuſe the ſame, but rather be encouraged thereby, more faithfully, and with more diligence to ſerve him, *&c.*

In the Statute of Queen *Mary*, (*g*) of the repeal of certain Treaſons, Felonies, and Præmunire's, wherein ſhe reduceth all to 25 *Ed.*3. the words are; Foraſmuch as the State of every King, Ruler, and Governour of every Realm, Dominion, or Commonweal, ſtandeth, and conſiſteth more aſſured by the love and favour of the Subject towards their Sovereign Ruler and Governour, than in Dread and Fear of Laws, made with rigorous Pains, and extream Puniſhment, for not obeying of their Sovereign Ruler and Governour: and Laws alſo juſtly made for the Preſervation of the Commonweal, without extream Penalty, or Puniſhment, are more often for the moſt part obeyed and kept, than Laws and Statutes made with great and extreme Puniſhment, *&c.* Therefore ſome are repealed.

(*g*) 1 *Mar. c.* 1.

By theſe the Clemency of the Princes is diſcovered, and the reaſon of enacting ſevere Laws in ſuch Caſes, *in Terrorem*, is cleared.

I muſt refer all other Diſcourſes of the Laws againſt Treaſon, to the Learned Books writ on that Subject, and only note what a (*h*) grave Author ſaith, That if we peruſe all our Books, Records, and Hiſtories; we ſhall find it a Principle in Law, a Rule in Reaſon, and truth in Experience, That Treaſon doth ever produce fatal and final Deſtruction to the offenders, and never attains the deſired End, although infinite miſchiefs are effected by it. For Conſpirators and Traytors one way or other have generally come to condign Puniſhment.

(*h*) Tranſcendent and multiplied Rebellion, *p.* 25. See Sir *Tho. Wyat*'s Speech at his Execution, in *Hollingſhead*, well worth peruſing by all concerned.

If what I have hitherto laid down, work any good Effect upon the Subjects in general, to keep them in their Duty to their Sovereign, and his Laws, or have afforded them ſuch Rules for Obedience, or dehortments from Faction, Sedition, Conſpiracies, and Rebellion, as I wiſh; I have attained the end for which I write: which is only to ſatisfie all ſorts of Subjects, how excellently compoſed the Government is, that our Kings cannot, or have any Intereſt, to rule Arbitrarily.

Therefore it will be the duty, advantage, and true Intereſt of all Subjects, ſo to comport themſelves to the Government, as to conſider the excellent Foundations upon which it is built, that neither by the Cunning of unquiet Spirits, the pretenders of Reformation of abuſes, the ambition of the aſpirers, nor eſpecially by the plauſible Charms of the *Republicans*, they be ever induced to diſquiet the Government, or rebel againſt it; leſt in concluſion they bring upon themſelves, and Poſterity, ſuch a Slavery, as we had too bloody an Example of in the late Calamitous times: and that above all things, they conſider that excellent Saying of the beſt of (*i*) Hiſtorians, That to ſtir up Diſſentions,

(*i*) *Quippe in turbas & diſcordias peſſimo cuique plurima vis: pax & quies bonis Artibus indigent.* 4. Hiſt. initio.

Diſſentions, and troubles, the worſt Men commonly have the greateſt Influence; but Peace and quietneſs are not eſtabliſhed, but by Men of rare gifts, and excellent Vertue.

FINIS.

THE Author being at great diſtance from the Preſs, and ſending up his Coppy by Partels, which (by reaſon of his Imployment in his Profeſſion) he was conſtrained ſometimes to commit to the Care of others; The following Chapter was not ſent up till moſt of the Treatiſe was Printed. Therefore he chuſeth rather to place it at the end, than to diſturb the order of the Pages, and deſires the Candid Reader will peruſe it next immediately after the 15th. Chapter, it being deſigned to have preceded the 16th. Chapter of The King's Soveraignty.

CHAP. (XVI.)

Of the Benefit and Excellency of Hereditary Monarchy.

(a) *Ariſt. Pol. l. 3. c. 10.* Βασιλεία ἢ ὑπὸ μὲν τῆς ἔξωθεν ἥκιστα φθείρεται, διὸ καὶ πολυχρόνιός ἐστιν.

The Advantage of Hereditary Succeſſion in Private Families.

THE (a) Philoſopher dividing Kingly Government into four kinds, as I have before inſtanced, allows all to be Hæreditary, except the *Æſymnatian*, which was Elective; and ſince in many places, he affirms Kingdoms to be more durable than Commonwealths, we may conclude that the fundamental cauſe of that duration is the Lineal Succeſſion.

We experience in private Families (where a long Series of Anceſtors have tranſmitted Inheritances to Poſterity) how by the ſettledneſs, and encreaſe of their Eſtates, their alliances, and the Employments they have had in their reſpective Ages, they have acquired Honour, Renown, Intereſt and Stability; that not only a greater Reſpect is payed to them, than to others of a later Riſe, but they are thereby enabled, upon many accounts to manage publick, or private affairs, with more ſure ſucceſs, and repute, than thoſe that have not acquired ſuch a *nodoſam Æternitatem*.

Ariſtotle's Opinion.

(b) Εἰ δὲ δή τις ἀεισον θείη τὸ βασιλεύειν ταῖς πόλεσι, πῶς ἕξει τὰ περὶ τὴν τέκνων; πότερον καὶ τὸ γένος δεῖ βασιλεύειν; ἀλλὰ γιγνομένων ὁποίων τυχὸν, βλαβερὸν· ἀλλὰ μὴ καταλείψει τὸν υἱὸν διαδόχους ὁ βασιλεύς, ἐπ' ἐξουσίας ἔχων τοῦτο ποιῆσαι; ἀλλ' οὐκ ἔστι ῥᾴδιον πιστεῦσαι. χαλεπὸν γὰρ καὶ μεῖζον ἀρετῆς ἢ κατ' ἀνθρωπίνην φύσιν.

De Repub. l. 3. c. 11.

(b) *Ariſtotle* makes that στοργὴ, or natural Love of Parents to their Children, to be one reaſon of the Succeſſion of Sons to Fathers, in their Kingdoms: thence he makes it improbable, that they who have obtained the Soveraignty, ſhould not deliver it to their Children, becauſe it would diſcover a Vertue beyond the ordinary Elevation of humane Nature, to prefer the

the Benefit and good of the People, by leaving them the Liberty of chuſing, upon every avoidance, the moſt worthy, (if ſuch a Prince's Son appeared not ſo) rather than to eſtabliſh the Principality in their own Family.

(c) *Polybius* ſpeaking of Kings being moſt eminent for Wiſdom, Juſtice, and Valour (whereby they drew the People to reverence them, and conſequently to ſubmit themſelves to their Conduct and Command) ſaith, That the Son (having his education under ſuch a vertuous wiſe Father, whereby he had been preſent with him when affairs of the greateſt Importance had been debated) in common preſumption was judged to be better capacitated to govern, than any of a ſtrange Family, and ſo none would envy him his dignity, but all readilier judged him the fitteſt to ſucceed. And there is good reaſon to conſider the cauſe of it; for Government is an Art not eaſily attained to, and by the unskilfullneſs in the proper Rules and Maxims, the wrong Applications, the Ignorance in purſuing the right Methods, and chuſing fit Inſtruments, the Factious and Populace get advantages to make unfortunate times. Therefore thoſe Monarchs, who from their Infancies are trained up, and accuſtomed to Inſtructions in the Rudiments of Government, as they grow up, muſt more readily comprehend them, muſt attain the better underſtanding of the great affairs, and ſecret reaſons of State, be more quick, apprehenſive, and ſagacious, in perceiving what is conducive to the common good, and what not; and ſo more ready in all publick Diſpatches, than ſuch who have not been educated with all theſe Advantages. Beſides, Governours at firſt muſt be to ſeek in underſtanding the nature of great Affairs; ſo that one may as well expect (c) a Man taken from the Plough ſhould be able to Conn a Ship, and carry her an *Eaſt-India* Voyage, as that a Perſon (though of the greateſt natural and acquired Parts) ſhould at firſt be fit to Pilot the Government, or skilful and dexterous in the ſteerage of the important affairs of a publick State: and (as in Republicks it falls out) by that time he hath arrived at a competent Skill, he muſt reſign his Place and Power to others, as raw and unexperienced as he was. Whereas Succeſſion in Monarchy doth effectually prevent this Inconvenience, and (which is of great moment) it gives them an Intereſt, and deſire of deſigning well for the publick good, ſafety, and ſecurity of the People, and the opportunity of finiſhing whatever is well begun.

Polybius his Opinion.

(c) Πεπεισμένοι, τὰς ἐκ τοιούτων γεγονότας, καὶ τεθραμμένας ὅτι τοιούτοις, παρεπλησίως ἕξειν καὶ τὰς προαιρέσεις. *Polyb. Hiſt. lib. 6. p. 455. D. Edit. Wickl.* 1509.

Several Reaſons why Succeſſion is to be preferr'd before Election.

For though it have happened by the Succeſſion of a weak, or vitious Prince, that damage and infelicity have befallen the People; yet it is very rare in Hiſtory, that two ſuch ſucceed one another. So we find in this Kingdom, that *Ed.* 1. and *Ed.* 3. brought as great Honour and Renown to their Countries, as their Fathers had Misfortunes; and even in ſuch Princes Reigns, the Calamities that have befallen their Kingdoms, have rather ſprung from the Potency of Factions (that took the advantage by the weakneſs of the Prince, to bring him to Contempt, that

(c) Dr. *Nalſon's* Common Intereſt, *p.* 113.

they might obtain the managery of affairs) than from other Cauſes. For even under ſuch unfortunate Princes, if it were not for factious Diſturbances, the Laws and good Order might, during their Reigns, conſerve their Kingdoms in Peace.

The Inconveniences that happen where Right Succeſſion is not obſerved.

Whereas in Kingdoms that are Elective, Competitors and Candidates cauſe not only great Diſturbances and Miſchiefs at the Inſtant (as we have infinite Examples when the *Roman* Emperors were choſen by the Factions of the Senate or Army, as alſo in *Germany*, before the expedient of chuſing a King of the *Romans*, and in the Miſeries that have befallen *Poland*) but Æmulations and Animoſities have been continued for Ages among the prime Nobility: and thence it is that the (*d*) Philoſopher ſo long ſince hath aſcribed it one of the Principal Cauſes of the Deſtruction of a Kingdom, when there is Diſcord in the Royal Family, or, as his Interpreter ſaith among the *participes Regni*, as Brethren and Kindred of the Royal Family, as (*e*) *Plutarch* tells us in the Kingdom of *Sparta*, and as *Juſtin* gives us an account of the ſlaughter of Brethren and Kinſmen in the Kingdom of *Syria*, and as it occaſioned the Deſtruction of the flouriſhing Kingdom of *Egypt*, by the Competition betwixt *Ptolomy* and *Cleopatra*, and as our Anceſtors ſadly experienced in the Civil Wars betwixt the Houſes of *York* and *Lancaſter*, and *France* in the Faction of *Orleance* and *Burgundy*, and of later Date in the Kingdom of *Hungary*, betwixt King *John* and the Emperor *Ferdinand*.

(*d*) Φθείρει δ' ὃ κατὰ δύο τρόπους. Ἕνα μὲν ταραττόντων τῶν μετεχόντων τῆς βασιλείας. *Lib.* 5. *Polit. c.* 10. *Giphanii Comment.*

(*e*) *In vita Cleomenis & Ægidis.*

If therefore ſuch Calamities befal Countries, where Factions ruine their Peace; how much more ſhall we judge the miſerable Confuſions will be, when any ſhall challenge a Power to make a Breach in the Royal Chain of Succeſſion, eſpecially when we find even at *Rome*, upon the Election of the Pope, by cuſtom the People plunder the Pallace of the Cardinal who is elected Pope: and ſince that outrage is committed where ſuch an one is choſen, as is owned by ſo great a part of *Europe* to be Chriſt's Vicar, we are not to wonder, that at the Death of the *Ottoman* Heir, the *Janizaries* and Soldiery rifle and plunder *Jews* and Chriſtians, and ceaſe not to commit all manner of Outrages, till the new Grand Signior, by his Preſence, and Bounty, puts an end to them.

(*f*) *Nalſon*'s Common Intereſt, *p.* 118.

Therefore as a grave (*f*) Author obſerves, He that hath not depoſed Reaſon, the King of his Soul, and elected in its place Prejudice and Paſſion, to govern there, or dare credit the univerſal Experience of the World, muſt be convinced of the great, neceſſary, and deſperate Inconveniences of a long *Interregnum*, and elective Monarchy; and that a lineal Succeſſion is the beſt Barrier againſt aſſaults from abroad, and is that ſacred, perpetual, vital Energy, which preſerves Government from internal Putrifaction, and ſecures us from one moſt dangerous Inconvenience, of having another Family to provide for. Therefore the (*g*) Excellent Hiſtorian moſt wiſely obſerves, That *Minoris eſt diſcriminis, Principem naſci quam ſumi*; That Subjects, more

(*g*) 10. *Annal.*

more naturally ſubmit to an undoubted, unqueſtionable Title (when the Government deſcends in the ſame manner as other Inheritances, with due reſpect to the ſingleneſs of Sovereignty) than to new Princes, the worth of whom, and their Families are untried.

This leads me to conſider, that this right of Succeſſion flows from the Law of (*h*) Nature, is founded on the Law of God, and Nations.

(*h*) Right of Succeſſion, *p.* 149.

Firſt, That is accounted to flow from the Law of Nature, which every Man finds grafted in his own Heart, and which is obeyed without any other Law, and for which Men neither ſeek, nor can give any other diſtinct reaſon: all which holds in this caſe. For who doubts, when he hears of an hereditary Monarchy, but that the next in Blood muſt ſucceed, and for which we need no poſitive Law? nor does any Man enquire for a further Reaſon, being ſatisfied therein, by the Principles of his own Heart. From this ground it is, that though a remoter Kinſman did poſſeſs as Heir, he could by no length of time, preſcribe a valid right: becauſe no man (as Lawyers conclude) can preſcribe a right againſt the Law of Nature; therefore the Law (*i*) ſaith, *Cum ratio naturalis, quaſi lex quædam tacita, liberis, parentum hæreditatem adjecerit, veluti ad debitam ſucceſſionem eos vocando: propter quod ſuorum hæredum nomen eis indultum eſt, adeo ut ne a parentibus quidem ab ea Succeſſione amoveri poſſint.* So in the (*k*) Parable, the Husbandman (who is preſumed to underſtand nothing but the Law of Nature) is brought in, ſaying, *This is the Heir, let us kill him, and ſeize on his Inheritance.* So the (*l*) Law further ſaith, *Præter, naturalem æquitatem ſequutus, iis etiam bonorum poſſeſſionem, contra* 12 *Tabularum leges, & contra jus civile permittit.* By which it is apparent, that this right of Nature was ſtronger than the Laws of the twelve Tables; though theſe were the moſt ancient, and chief Statutes of *Rome*.

Hereditary Succeſſion agreeable to the Law of Nature.

(*i*) *Cum ratio naturalis. ff. de bonis damnati.*

(*k*) *Matth.* 21.

(*l*) *Et Sect. emancipati. Inſtitut. de Hæred. quæ ab Inteſtato.*

This holds alſo in the Collateral Succeſſion of Brothers, and others; according to that, (*m*) *Hac parte, Proconſul, naturali æquitate motus, omnibus cognatis permittit bonorum poſſeſſionem, quos ſanguinis ratio vocat ad hæreditatem.* For thoſe who are now Brothers to a preſent Prince, have been Sons to the former; therefore as St. *Paul* ſays, *If a Son, then an Heir*, except he be ſecluded by the Exiſtence, and Succeſſion of an elder Brother.

(*m*) *L. hac parte. ff. unde cognati.*

Secondly, That the Law of God gives right of Succeſſion to proximity of Blood, is manifeſt, in that, if a Man hath no (*n*) Son, or Daughter, his Inheritance ſhall deſcend upon his Brother; and ſo God determines in the caſe of (*o*) *Zelophead*'s Daughters; and ſo (*p*) *Ahaziah* was made King (though the youngeſt) in his Fathers ſtead, becauſe, ſays the Text, *The Arabians had ſlain all the eldeſt*: which clearly ſhews, That by Gods Law, he could not have ſucceeded, if the eldeſt had been alive. So we ſee the birth-right was owned in *Eſau*, but

Agreeable to the Law of God.

(*n*) *Numb.* 27. *v.* 9, 10.

(*o*) *Numb.* 36.

(*p*) 2 *Chron.* 22. 1.

that he ſold it, the priviledge of which is there fully diſcovered, not only in diſcovering the right of Primogeniture, but likewiſe in the Donation of Parents to their Children; that Bleſſing being like the laſt Will and Teſtament.

Agreeable to the Law of Nations.

Thirdly, As to the Law of Nations, it might be made clear by the recital of all the Laws of Kingdoms that are Hereditary, and not Elective, That degrees of Succeſſion were exactly obſerved, according to that of (q) *Bodin*, *Ordo, non tantum naturæ, & divinæ legis, ſed omnium ubique gentium hoc poſtulat.* So Pope (r) *Innocent*, *In regnis hæreditariis caveri non poteſt, ne filius aut frater ſuccedat*; and ſo in all Hiſtories of Hereditary Monarchies, we find it where Potent Uſurpation hath not obſtructed the free current, or by ſome violent means derived it into another Channel.

(q) *De Repub. lib.* 6. c. 5.

(r) *In c. grand. de ſupplenda neglig. Prælat.*

If Succeſſions of ſo great importance had not been fixed by immutable Laws of God and Nature, the various and inconſtant inclinations of preſent Governors (ſaith a very (s) Judicious Author) had made the Nations whom they governed very unhappy: If they yielding to the importunities of Mothers, or Stepmothers, or clouded by the Jealouſie of Flatterers, or Favourites; or upon ſome unaccountable averſion, ſhould place the Crown upon what Head they pleaſed. Therefore God did very juſtly and wiſely ſettle this Succeſſion, that both King and People might know, That it is by him that Kings Reign, and Kingdoms are ſecured in Peace againſt Factions.

(s) *Jus Regium p.* 158.

The *Britiſh* Monarchy Hereditary.

To come more particularly to our own Country: The Monarchy of great *Britain* and *Ireland*, is undoubtedly as firmly eſtabliſhed hereditarily in his Majeſties Blood and Family, as it is in any Monarch's in *Europe*.

(t) Of the States and their Powers, *p.* 68.

A late *French* (t) Author, ſpeaking of the Succeſſion of the Crown of *France*, ſaith, That the Election of the Kingdom is not of one Perſon only, but of the blood, and operates ſo far, as there is life in that blood; The blood being choſen with the Prerogative of *Primogeniture*: So that when one Perſon of the blood is dead (the Power by the ſame Prerogative being transferred to the blood) remains and reſts in the blood ſtill living, and in him of the blood who ſucceeds by that Prerogative, and in none elſe.

(u) *Majeſtas Intemerata.*

The Majeſty Royal (ſaith a (u) profound Lawyer and Antiquary upon the murther of King *Charles* the Firſt) expired not, nor was left adhering to the bloody Axe or Block. It wandred not like *Adrian's* Ghoſt, nor hovered in an Airy abſtraction. For the King, or rather the Kings line (ſaith another (w) great Lawyer) is a name of Continuance, which, as the Law preſumes, ſhall always remain as Head and Governour of the People. For the *Engliſh* Monarchy (x) knows no *Interregnum*, being Succeſſive by inherent Birthright, whereby infinite inconveniences are avoided: ſo that the young Phenix ſtays not to ariſe out of the Spicy aſhes of the old, but the Soul of Royal-

(w) *Finch*, *p.* 83.

(x) *Coke* 4. *Report. Præf.*

ty

ty, by a kind of Tranſmigration, paſſeth immediately out of one body into another; and in the ſame manner, will every right Heir acquire the Royalty after his Predeceſſor ceaſeth to be.

Therefore the judicious Lord (*y*) *Verulam* obſerves, That *H.* 7. knowing that the Laws permit not any interim, ſuſpenſion, or ſtay of the Title, and having no mind to own his Queens Title the beſt, (She being the Heireſs of the houſe of *York*, as he in ſome reſpects was Heir of the Houſe of *Lancaſter*) he ordered the Act ſo, that it ſhould neither be by recognition, nor his Title be eſtabliſhed by a new Law: (*z*) but choſe a milder way, *viz.* of ſimple Eſtabliſhment in covert words, interpretable ſeveral ways, that the inheritance of the Crown ſhould reſide, remain, and continue in him.

So King *James* in his Βασιλικὸν Δῶρον, p. 209. tells the Prince, That at the very moment of the expiring of the King Reigning, the neareſt and lawful Heir entreth in his place; and ſo to refuſe him, or intrude another, is not to hold out the Succeſſor from coming in, but to expel and put out their Righteous King.

So Sir (*a*) *Edward Coke* affirms, That it is a known Maxim of the Laws, That in the moment of the deſcent of the Crown, the perſon on whom it deſcends (which is the next immediate Heir only) becomes complete and abſolute King, to all intents and purpoſes. And ſo he ſaith, The ſecond Son of the King of *England* after (*b*) the death of the firſt-born is eldeſt Son, within the Statute of 25 *E.* 3, as it was reſolved in the caſe of Prince *Charles*, concerning the Dutchy of *Cornwall*.

It would be a tedious work to recite all the Authorities in this Caſe may be found in the Statutes and Law-Books. I will content my ſelf, inſtead of all others, with the Act of (*c*) Recognition 1 *Jacobi primi*, wherein, after the two Houſes had enumerated the benefits by the Conjunction of the Houſes of *York* and *Lancaſter*, and the uniting of *England* and *Scotland* in the Kings Perſon, and that They agnize their conſtant Faith, Obedience and Loyalty to him, and his Royal Progeny, The words of the Act are, In moſt humble and lowly manner, do beſeech your moſt Excellent Majeſty (as a memorial to all poſterity among the Records of your High Court of Parliament for ever to endure, of our Loyalty, Obedience, and hearty humble affection) it may be publiſhed and declared in the High Court of Parliament, and enacted by Authority of the ſame, That we (being bound thereunto by the Laws of God and man) do recognize and acknowledge (and thereby expreſs our unſpeakable joyes) that immediately upon the diſſolution and deceaſe of *Elizabeth* late Queen of *England*, the Imperial Crown of the Realm of *England*, &c. did by inherent Birthright, and lawful undoubted Succeſſion, deſcend and come to your moſt Excellent Majeſty, as being lineally, juſtly, and lawfully, next and ſole Heir of the blood Royal of this Realm, as is aforeſaid, *&c.*

and

(*y*) *Interregnum aut tituli ſuſpenſionem Leges Regni non permittere.* Hiſt. H. 7. p. 26.

(*z*) *Potius medii via inſtitit, ſimplicis ſtabilimenti. Ideo verbis tectis & utrinque mutantibus his, ut hæreditas Coronæ reſideret, remaneret & continuaretur in Rege.*

(*a*) *Report* 7, 8, 10, 11. *Calvin's* Caſe; *Watſon* and *Clark's* Caſe, 1 *Jac.* 1.

(*b*) 3. *Inſtit.* 8.

(*c*) *Cap.* 2. The Recognition of King *James* the Firſt.

and thereunto we moſt humbly and faithfully do ſubmit and oblige our ſelves, our Heirs, and Poſterities for ever, until the laſt drop of our blood be ſpent; and do beſeech your Majeſty to accept the ſame as the firſt-fruits of this High Court of Parliament, of our Loyalty and Faith to your Majeſty, and your Royal Progeny and Poſterity for ever.

By which, it firſt appears that the Crown of *England* is an unalterable Entail, and the reverſion in him only by whom Kings reign, without any Election or conſent of the People, otherwiſe than by acknowledging the lawful Right of the Kings, derived from God by their blood to them.

How to underſtand the Act made by Queen *Elizabeth* againſt the Claims of *Mary* Queen of *Scots*.

Alſo from this Recognition we may conſider, Secondly, what to think of that Act of Queen *Elizabeth*, That if any Perſon ſhall affirm that the Parliament of *England* has not full power to bind, and govern the Crown in point of Succeſſion and deſcent, that ſuch a Perſon, during the Queens life, ſhall be guilty of High Treaſon. For we muſt conſider that by the words *bind and govern*, we may conceive the ſence to be, That the Parliament is Judge where there are differences (*d*) betwixt Competitors in nice and controvertible points, which cannot be otherwiſe decided. So that ſuch temporary Acts as theſe, are to be interpreted, and reſtrained by other uncontroverted Laws.

(*d*) *Jus Regium*, p. 181.

We muſt alſo look upon it as made to ſecure the Queen againſt *Mary* Queen of *Scots*, and to let her know it was to no purpoſe for her to deſign any thing againſt the Right or Perſon of Queen *Elizabeth*; upon that ground, as may be preſumed, the Queen of *Scots* might claim, for that Queen *Elizabeth* by Act of Parliament had been declared a Baſtard. Therefore to let her know, that it was to no purpoſe to inſiſt upon any ſuch claim, and that her other Right as next undoubted Heir by blood to the Crown, might be altered or governed, this Act was made: So that we muſt from hence conclude, That it was to be reckoned only as one of thoſe Statutes which the Law ſays are made *ad terrorem*, *& ex terrore* only; which may appear the more evidently, becauſe it was never made uſe of. For it is to be mainly conſidered, that this Law being made to exclude Queen *Mary* and the Scotiſh Line, as appears by that clauſe wherein it is declared, That every Perſon or Perſons of what degree or Nation ſoever they be, who ſhall during the Queens life, declare or publiſh that they have Right to the Crown of *England*, ſhall be diſinabled to enjoy the Crown in Succeſſion. Therefore it was never valid: (*e*) For if it had been good, King *James* might have thereby been excluded by that perſon who ſhould have ſucceeded next to the Scotiſh Race: For it is undeniable, that Queen *Mary*, did during Queen *Elizabeth*'s life, pretend Right to the Crown, upon the account that Queen *Elizabeth* was declared Baſtard. Therefore the calling in of King *James*, after this Act, and the acknowledging his Title, do clearly evince, that the Parliament of *England* knew, they had no

(*e*) *Id.* p. 183.

Power

Power to make ſuch an Act; and we may conclude, That ſuch Politick and Temporary proviſions find no approbation, either by the Laws, or ſucceeding ages (who in all ſuch caſes judge more impartially:) therefore it is much more honourable, for the Legiſlative Power, to found their Laws upon Juſtice and Right, rather than upon the humours and Intereſts of thoſe, who deſire but the ſhadow of a Law to countenance their deſigns.

The Injuſtice in deposing Kings.

It muſt be owned that King *Edward* the Second was depoſed, for making uſe of *Gaveſton* and the *Spencers*. But how illegally, all ſucceeding ages have acknowledged; and it rather ſhews how extravagant the People, and their Repreſentatives are in their humors, than how juſt their Powers are: For by the ſame parity of Reaſon, the horrid Murther of the bleſſed Martyr, or the Murther of *Edward* the Second, may be juſtified as his deposing may be; and the like may be ſaid of King *Richard* the Second, againſt whom the Fourteenth Article was, that he refuſed to allow the Laws made in Parliament; which had been in effect to conſent, that the two Houſes ſhould have been the Soveraign, and that he had transferred the Royal Power on them. Whoever deſires further ſatisfaction, may conſult *Arniſæus* in that Treatiſe, *Quod nulla ex cauſa ſubditis fas ſit contra legitimum Principem arma ſumere.*

When Acts of Parliament to be leſs eſteemed.

Whereas *Richard* Duke of *York* in *Henry* the Sixth's time, after he had been declared Heir Apparent, was by another Act of Parliament declared uncapable of Succeſſion; all that can be inferred from it is, That Acts of Parliament (when they are bottomed upon private affections to Parties in times of Faction and civil War) are not to be looked upon with that veneration, as when they regularly paſs, in times that are calm, when no potent Perſons oppreſs Juſtice, or uſurping Powers hinder faithful Judges from expounding the Laws ſoundly. Therefore we find, in the claim of the ſaid Duke of *York*, that it is more conſentaneouſly to Law expreſſed, That no Act taketh place, or is of force againſt him, that is right inheritor of the Crown, as accordeth (ſaith the Record) with Gods Laws, and all natural Laws: and we may obſerve that though there was a Succeſſion of three Kings of the Houſe of *Lancaſter*, who had uſurped the Crown for Sixty Years; yet all our Hiſtorians, and the Laws call thoſe Kings *de facto* and not *de jure*. Such a true ſence of juſt and right the unintereſted Ages have had of that Uſurpation ever ſince: although there were Acts of Parliament carefully penned, to corroborate the Title of the houſe of *Lancaſter* during that time, and all ways and means uſed to have eſtabliſhed that Line; yet by vertue of the Right of Lineal Succeſſion, *Edward* the Fourth, Son to the ſaid Duke of *York*, came to be owned lawful King of *England*, though the Right of his Family had been interrupted ever ſince *Henry* the Fourth uſurped the Crown: which might have been a ſufficient document to all Ages, not to have attempted any ſort of præterition of the Right Heir.

Yet

Yet we find that unſucceſsful attemps were made by *H.* 8. contrary to the fundamentals of Succeſſion, which, when rightly conſidered, I hope will convince all, of how little validity, even ſuch Acts are to be reputed. Therefore becauſe theſe have been made uſe of for Precedents, I ſhall ſpeak a little more fully to them.

(*f*) *Cap.* 22. Concerning the ſeveral Entailings of the Crown by King *Henry* the Eighth.

In the 25 of *H.* 8. (*f*) the Marriage with Queen *Katherine* is made void, and that with Queen *Anne*'s declared good, and an Entail made on the Iſſue Male or Female, and the Penalty for hurting the Kings Perſon, diſturbing his Title to the Crown, or ſlandering the preſent Marriage is judged High Treaſon, and

(*g*) *Cap.* 2.

Anno 26. (*g*) a ſtrict Oath is injoyned to obſerve the Succeſſion there appointed.

(*h*) *Cap.* 7.

But 28 *H.* 8. (*h*) it is declared that the former Act was made upon a pure, perfect and clear foundation, thinking the Marriage then had between his Majeſty and the Lady *Anne*, (they are the words of the Act) in their Conſciences, to have been pure, ſincere and perfect, and good, *&c.* till now of late, that it appeareth that the ſaid Marriage was never good or conſonant to the Laws, but utterly void and of none effect; and ſo both the Marriage with the Princeſs *Katherine* and the Lady *Anne* are declared void, and their Iſſue made illegitimate; and the perils are enumerated that might enſue to the Realm, for want of a declared lawful Succeſſor to the Crown; and the Act impowers the King (if he dye without Iſſue of his body) that he may limit the Crown to any, by his Letters Patents, or his laſt Will in Writing: and it is declared Treaſon to declare either of the Marriages to be good, or to call the Lady *Mary* or Lady *Elizabeth* Legitimate, and the former Oath is made void: and this may be judged to be procured when he reſolved to ſettle the Crown on *Henry Fitz Roy*, Duke of *Richmond*, his natural Son.

(*i*) *Cap.* 1.

But after the Birth of Prince *Edward*, 38 *H.* 8. (*i*) another alteration is made, whereby the Crown is entailed on Prince *Edward*, and for want of his Iſſue on the Lady *Mary*, and for want of her Iſſue, on the Lady *Elizabeth*; and for want of Iſſue of the King, or them, then the King is impowered by his Letters Patents, or laſt Will, to diſpoſe of the Crown at his free will.

It is therefore to be conſidered, that in ſuch a juncture of affairs, when the legality of the Kings Marriages were ſo diſputable, by reaſon that two of the legal Succeſſors (upon niceties not of nature, but of the Popes Bulls for Divorcing) were

(*k*) 25 *H.* 8. *c.* 22.

declared Baſtards, there was ſome reaſon (*k*) that the Act ſhould expreſs that the Ambiguity of ſeveral Titles pretended to the Crown (then not perfectly declared, but that men might expound them to every ones ſiniſter affection and ſence, contrary to the right legality of Succeſſion, and Poſterity of the lawful Kings and Emperours of the Realm) hath been the cauſe of that great effuſion and deſtruction of mens blood;

blood; and the like cauſe will produce the like effect, as the words are.

Upon ſuch grounds it was very plauſible to declare by Act of Parliament the Succeſſion. But this does not prove that where the Right of Nature is clear, that the Parliament may invert the ſame: and they teach us how dangerous it is to leave Parliaments to the Impreſſion of Kings (when it is too obvious, the firſt of theſe Laws was made to gratifie the Kings affection to Queen *Anne*) in the caſe of naming a Succeſſor; as it is alſo to expoſe Kings to the Arbitrarineſs of Parliaments. And we may well infer (*H.*8. taking ſuch care by his Parliaments to legitimate and illegitimate his Iſſue, according to the preſent intereſts of his Affairs and Paſſions) that ſuch contradictory Acts could not be all true; and though the Reſponſes from *Delphos* or any Oracles of the Gentile ages, might miſs the truth as much, yet by their dubious anſwers, they forfeited not their reputations ſo much.

We may alſo note (*l*) that by God Almighty's Providence, and the care of his own Laws, the Duke of *Richmond* was removed by death, to prevent the unjuſt Competitors, and Prince *Edward* was born; and by the ſame Providence, and the ſence the Subjects had of the great Fundamental of Hereditary Succeſſion, contrary to ſome of theſe Acts, and what *Edward* the Sixth did in ſetling the Crown upon the Lady *Jane Grey*, proved of no force: for Queen *Mary* ſucceeded, though ſhe was a Papiſt, and Queen *Elizabeth* ſucceeded her, though ſhe was declared Baſtard. The rights of Blood prevailing over the Formalities of Divorce and the Diſpenſations of the Popes, and the Laws made to gratify *Henry* the Eighth's pleaſure, as the ſtrength of nature doth often prevail over Poiſons; and to evince the greater certainty of their being void, ſo little notice was taken of thoſe, and the ſubſequent Acts, *Anno* 1535. that the Heirs of the Blood ſucceeded without repealing that Act, as an Act in it ſelf invalid from the beginning: For ſuch Acts are paſt by without being repealed, as we find in the Act of Recognition of Queen *Elizabeth*, no notice was taken of the Act of Parliament againſt her; and *Blackwood* (*m*) obſerves very well, that ſo conſcious were the makers of theſe Acts, of the illegality of them, and of their being contrary to the immutable Laws of God, Nature, and Nations, that none durſt produce that Kings Teſtament, wherein he did nominate a Succeſſor conformable to the power granted by thoſe Acts; but that as ſoon as they were freed by his Death, from the violent oppreſſions that had forced them to alter a Succeſſor three ſeveral times, and at laſt to ſwear implicitly to whomſoever he ſhould nominate, they proclaimed firſt Queen *Mary*, and after her deceaſe Queen *Elizabeth*.

(*l*) *Jus Regium*, p. 178, 179.

(*m*) P. 45. *Jus Regium*, p. 179.

Therefore all theſe Acts, both of *Henry* the *Eighth*, and *Edward* the Sixth, are to be looked upon as Politick interims, to ſerve for ſome preſent ends. And as we obſerve the trepida-

tions, vibrations, and as we may ſay, uneaſineſs of things in all that have been diſplaced, till reſeated again (whereby we have a certain *Indicium* of any thing Natural) ſo may we note the naturalneſs of Hereditary Succeſſion by the Tragical Convulſions, and unſetledneſs of things in any State, where great force and policy have uſurped the Crown, till it hath returned to the right owner. So we ſee after the force was removed by the expiration of *Henry* the Eighth and *Edward* the Sixth, things returned again into their priſtin State, according to the Laws of the Crown.

Fundamentals in Government not to be altered.

I ſhall now paſs to conſider other Reaſons; and Firſt it may be obſerved, That the Venerable Age of ſuch Fundamental Laws, ſhould have another kind of reſpect pay'd to them, than to be made obſolete, becauſe they will not ſort with ſome new-faſhioned Intrigue. For it is a moſt true Maxime, *Non magis aliunde floret reſpublica, quam ſi legum vigeat Authoritas.* So in the firſt Parliament (*n*) of King *James* the Firſt, it is fully expreſſed, That to alter and innovate the Fundamental and Ancient Laws, Priviledges, and good Cuſtoms of the Kingdom, (whereby not only the Kings Regal Authority, but the Peoples ſecurities of Lands, Livings, and Priviledges (both in general and particular) are preſerved and maintained, and by the aboliſhing or alteration of the which, it is impoſſible but that preſent confuſion will fall upon the whole State, and frame of Government) is of moſt dangerous conſequence: whence we may well infer, That to endeavour to alter the right of Succeſſion of the Crown, in the direct line, is one of the moſt dangerous Innovations of all others, as drawing innumerable miſchiefs after it.

(*n*) *Cap.* 2.

See Commiſſion for Union, 1604.

The Hereditary Succeſſion is a Fundamental.

Now there can be no greater fundamental right than the Succeſſion of our Monarch. That our Monarchy is Hereditary, is the great Baſis upon which moſt of all the poſitions of the Laws are eſtabliſhed, which every where we meet with in the Writings of Lawyers, *viz.* That the King never dies, the next Succeſſour in Blood is legally King, from the very moment in which the laſt King dies; that there needs neither Coronation, or Recognition of the People, to intitle him to the exerciſe of his Regal Authority; that his Commiſſions are valid, all Men are liable to do him Homage, and hold their rights of him, and his Heirs; he may call Parliaments, diſpoſe of the Lands belonging to the Crown; and all that oppoſe him are Rebells: Generally this Principle runs through all the Veins of our Laws, it is that which gives Life and Authority to our Statutes, but receives none from them, which are undeniable marks and Characters of a Fundamental Right in all Nations.

Secondly, Such further proviſion hath the Law made, to ſecure the Succeſſion in the direct line, that if the right Heir of the Blood, or the Father or Mother of the right Heir be attainted of High Treaſon, by Parliament, the Attainder is no obſtruction

obſtruction to the deſcent. If he, who were to ſucceed had committed Murther, or were declared Traytor formerly to the Crown, for open Rebellion againſt the King and Kingdom; yet upon his coming to the Crown he need not to be reſtored by Act of Parliament: but his very right of Blood would purge all theſe Imperfections. For *tanta eſt Regii ſanguinis prærogativa, & dignitas, ut vitium non admittat, nec ſe contaminare patiatur*; ſaith a (*o*) learned Lawyer: and the Reaſons given are, For that no Man can be a Rebel againſt himſelf, nor can the King have a Superior; and conſequently there can be none whom he can (*p*) offend: and it would be abſurd, that he, who can reſtore all other Men, ſhould need to be reſtored himſelf. Alſo the Puniſhments of Crimes, ſuch as Confiſcations, *&c.* are to be inflicted by the Kings Authority, or to fall to the Kings Treaſury; and it would be moſt abſurd, that a Man ſhould exact from himſelf a Puniſhment.

(*o*) *Craig.*

(*p*) *Jus Reg. p.* 169.

So *Richard Plantaginet* Duke of *York*, and *Edward* the Fourth his Son, were both attainted; yet *Edward* the Fourth was rightful King, and no impediment in the Succeſſion accrued by it.

So *Charles* the Seventh of *France* (though baniſhed by Sentence of Parliament) did afterwards ſucceed to the Crown; and though *Lewis* the Twelfth forfeited for taking up Arms againſt *Charles* the Eighth, yet he ſucceeded: and *Alexander* Duke of *Albany*, and his Deſcendants, being declared Traytors, by his Brother, King *James* the Fourth; yet his Son *John* being called home upon his Uncle's Death, was declared Tutor and Governour, without any remiſſion, or being reſtored; and if his Couſin King *James* had died without Iſſue, he had been declared the true Succeſſour of the Crown.

We have a memorable Inſtance of this in *H.* 7. who when he came to the Crown, called his Parliament; and the Judges having determined, that thoſe Members of the Houſe, that had been outlawed by the Parliament in *Richard* the Third's time, and been declared Rebels, ſhould abſent themſelves, till a Bill were brought in for their reſtoring: It was moved among the Judges what ſhould be done about the King, who had been condemned, and declared Traytor, *&c.* and it was by the unanimous conſent of all the Judges (ſaith the learned (*q*) Chancellor) declared, That the Crown removed all the obſtructions in the Blood, which might in any manner impede its deſcent; and from that time the King took the Crown, the fountain of his Blood was purged, and all the Corruptions and Impurities taken away: ſo that he had no need of any Parliamentary help to ſupply him.

(*q*) *St. Alban's Hiſt. H.* 7. *p.* 29. *Coronam ipſam omnes ſanguinis oppilationes quæ deſcenſum Coronæ ullatenus impediunt, deobſtruere.—— Ut Regi opera Parliamentaria non fuiſſet opus.*

Thirdly, The Conſideration of the Oaths, which the Subjects are bound to take and obſerve, gives ſome further Proof of the Obligation of all the Subjects to maintain this lineal Succeſſion.

The Oaths of Allegiance and Supremacy againſt altering Succeſſion.

The Oaths of Allegiance and Supremacy bind the Subjects to bear Faith and true Allegiance to the King's Highneſs, his Heirs, and lawful Succeſſors, and that to their Power they ſhall aſſiſt and defend all Jurisdictions, Priviledges, Preheminences and Authorities granted to the King's Highneſs, his Heirs, and lawful Succeſſors, or united and annexed to the Imperial Crown of this Realm, and of thoſe Priviledges, *&c.* I think none will deny, but that Hereditary Succeſſion is one of the principal Prerogatives intended by thoſe Oaths.

We are not in theſe only ſworn to His Majeſty, but his Lawful Succeſſors; which word, *Lawful*, is inſerted, to cut off the Pretences of ſuch as ſhould not ſucceed by Law, and the inſolent Arbitrarineſs of ſuch, as being but Subjects themſelves, think they may chuſe their King.

Theſe being promiſſory Oaths, as well to the Succeſſors, when their Right ſhall fall, as to the preſent King; they have every of them in their reſpective degrees and orders, an indiſpenſible Right confirmed to them by this Oath. So that the Predeceſſor hath no legal right to deprive his Succeſſor, as hereafter I ſhall clear, nor to remit the Peoples Obligation to him as lawful Heir and Succeſſor: (r) much leſs can the two Houſes do it; for they are all within the Obligation of this Oath, and it is unreaſonable, that Men ſhould diſpence with their own promiſſory Oaths to others: for this would deſtroy all Faith and Confidence amongſt Men, and pull up the very roots of Society and Government.

(r) Addreſs, *part* 3. *p.* 64.

Objection.

(s) *Coke* on *Littleton*, *p.* 8.

Anſwered.

Whereas ſome object out of my Lord (s) *Coke*, That none is Heir before the death of his Anceſtor, but Heir apparent: It is to be conſidered, that it muſt be the Heir Preſumptive, or apparent, that is here underſtood; otherwiſe the inſerting the word, *Heir*, were ſuperfluous, if by the Oaths were not intended, he that is next Heir upon the Death of the King; and if any Perſon think to evade it by affirming, that if the Parliament declare any Perſon to be no next Heir, he ceaſeth to be ſo; as alſo not to be lawful Succeſſor, becauſe by ſuch an Act he is outlawed: Let ſuch Perſons conſider that this is neither better nor worſe than palpable Æquivocation. For we ſwear in the common Sence of the words, and ſo by *Heir* we underſtand ſuch as by proximity of Blood, have greateſt right to ſucceed in the Inheritance.

(t) See 18 *E.* 3.

It may be farther conſidered that the Lord Chancellor, Treaſurer, and Judges, (t) all the great Officers of State, the Privy-Council, *&c.* are all ſworn to defend the Rights of the Crown, and that they ſhall not concurr or aſſent to any thing which may turn to the King in Damage or Diſ-heriſon. How then can any of theſe, much leſs the Judges (who are to expound, and interpret the Law) conſent without palpable violation of their Oaths, to the changing of the Eſſence of the Monarchy.

Acts of Parliament cannot alter Lineal Succeſſion.

I ſhall now endeavour to prove, that no Parliament, by a compleat Act, can legally alter the Succeſſion in an Hereditary Monarchy. For

For first all (*u*) Kings and Parliaments are subordinate to the Laws of God, the Laws of Nature, and Nations. So that unless we give the Inferior Power and Jurisdiction over the Superior, no Act of Parliament can be binding to overturn what those three Laws have have established; and I hope I have proved under all these Heads, in the preceding part of this discourse, that the right of Succession is founded on them. As to the Law of God, it is clear not only from the general dictates of Religion; but 28 *H.* 8. *c.* 7. the Parliament uses these words, For no Man can dispence with God's Laws, which we also affirm and think.

(*u*) *Jus Reg. p.* 153.

As to the Laws of Nature they are acknowledged to be immutable from the Principles of Reason. So the (*w*) Law it self confesseth, *Naturalia quædam Jura, quæ apud omnes gentes observantur, divina quadam providentia constituta, semper firma atque Immutabilia permanent*: Certain natural Laws, which are observed by all Nations (and such is that of *Primogeniture*) by Divine Providence being constituted, remain always firm and immutable. So when the Law declares that a supreme Prince is free from the obligation of Laws (*Solutus Legibus*) yet Lawyers (*x*) still acknowledge, that this does not exclude these Supream Powers from being liable to the Laws of God, Nature, and Nations, as is evident by all that treat of that Point.

(*w*) *Sect. sed naturale. Institut. de Jure naturali.*

(*x*) *Voet. de Statutis sect.* 5. *c.* 1, *Accursius in L. Princeps F. de Leg. Clementina pasturalis de re Judicata.*

Nor can the Law of Nations be overturned by private municipal Laws; so all Statutes to the prejudice of Ambassadors (who are secured by the Law of Nations,) are confessed by all to be null, and the highest Power whatsoever cannot take off the denouncing of a War, before a War can be lawful.

Besides, secondly, a Parliament cannot do more than (*y*) any absolute Monarch in his own Kingdom; for they, when joyned, are but in place of the supreme Power sitting in Judgment. We must not think our Parliaments have an unlimited Power *de jure*, so as they may make a forfeiture, or take away Life without a cause, or pass Sentence against the Subjects, without citing or hearing them. For if they had such Power, we should be the greatest Slaves, and live under the most arbitrary Government imaginable.

(*y*) *Jus Reg. p.* 154.

Therefore an absolute Prince cannot, in an Hereditary Kingdom (where the Successor is to succeed *Jure Regni*,) (*z*) prejudge the Successors right of Succession; for the same right, the present King hath to the Possession, the next of Blood hath to the Succession. Therefore *Hottoman Lib.* 2. *de Regno Galliæ* affirms, That *ea quæ, Jure Regni, primogenito competunt, ne Testamento quidem Patris adimi possunt*: That in the absolute Monarchy of *France*, The Father cannot by his last Will deprive the Firstborn of those things which belong to him by Royal right. So when the King of *France* designed to break the Salique Law of Succession, as in the Reign of *Charles* the Fifth, it was found impracticable by the three States. So when *Pyrrhus* would have preferred his younger Son to the Crown; (*a*) the *Epirots* (following

(*z*) *Nulla clausula Successori Jus auferri potest, modo succedat ille Jure Regni.* Aristæus c. 7. num. 5.

(*a*) *Pausanias, lib.* 1.

lowing the Law of Nations and their own) refuſed him. So *Anno* 1649. when *Amrat* the Grand Signior left the Empire to *Han* the *Tartarian*, paſſing his Brother *Ibrahim*, the whole Officers of State did unanimouſly cancel the Teſtament, and reſtored *Ibrahim* the true Heir, though no other than a Fool. So if Kings could have inverted their Succeſſion, Saint *Lewis* had preferred his own Third Son to *Lewis* his Eldeſt; and *Alphonſus* King of *Leon* in *Spain*, had preferred his Daughter to *Ferdinand* his Eldeſt Son; and *Edward* the Sixth of *England*, had preferred, and did actually prefer the Lady *Jane Grey* to his Siſters *Mary* and *Elizabeth*.

Thirdly, It is undeniable, in the opinion of all Lawyers, That a King cannot in Law alienate his Crown, but that the Deed is void, nor can he in Law conſent to an Act of Parliament declaring that he ſhould be the laſt King: For if ſuch conſents and Acts (*b*) had been ſufficient to bind Succeſſors, then weak Kings by their own ſimplicity, and gentle Kings by the Rebellion of their Subjects, or being wrought upon by the importunity of their Wives, or Concubines, or the miſ-repreſentation of Favourites, might do great miſchiefs to their People, in raiſing up continual Factions; of the miſeries of which I ſhall ſpeak hereafter.

(*b*) *Jus Regium*, *p.* 163.

This is owned in Subjects, That the Honour and Nobility that is beſtowed upon a man and his Heirs, doth ſo neceſſarily deſcend upon thoſe Heirs, that the Father or Predeceſſor cannot exclude the Succeſſor, or derogate from his Right, by renouncing, reſigning, following baſe, or mean Trades, or ſuch like. For, ſay the Lawyers, ſince he derives his Right from his old Progenitors, and owes it not to his Father, his Fathers Deed ſhould not prejudge him; ſo much more in Kings, (the ill conſequences of ſuch violations of Juſtice and Right being infinitely more deſtructive) the Predeceſſor ſhould not do any Act to prejudice his Succeſſor: For that right of blood which makes the Eldeſt Firſt, makes the other Second; and all the Statutes that acknowledge the preſent Kings Prerogative, acknowledge that they belong to him and his Heirs. For as a Prince cannot (even *ex plenitudine poteſtatis*) legitimate a Baſtard, in prejudice of former Children, though they have only but an hope of Succeſſion; much leſs can he baſtardize or diſinherit the Right Heir, who is ſo made by God, and honoured from him with the Character.

(*c*) *Fab. Cod.* 9. *tit.* 28.

If therefore Kings (how abſolute ſoever) cannot *de jure* invert the natural order of Succeſſion, there is no reaſon that the States of Parliament ſhould have ſuch a Power. For by the known Laws they have no Legiſlative Power otherwiſe than by aſſenting to what the King does; and all that their aſſent could do, would be no more than that they, and their Succeſſors ſhould not oppoſe his nomination, becauſe of their conſent: but that can never amount to a Power of transferring.

For if the States of Parliament had this Power originally in themſelves

themſelves to beſtow, why might they not reſerve it for themſelves, and ſo perpetuate the Government in their own hands? So Judge *Jenkin* aſſerts, according to Law, That no King can be named, or in any time made, in this Kingdom, (*d*) by the People, Kings being before there were Parliaments: and there is good reaſon; for then the Monarchy ſhould not be Hereditary, but Elective: the very Eſſence of Hereditary Monarchy conſiſting in the Right of Succeſſion: whereas if the Parliament can prefer the next ſave one, they may prefer the laſt of all the Line; and the ſame reaſon by which they can chuſe a Succeſſor (which can only be, that they have Power above him) ſhould likewiſe (in the opinion of a very (*e*) learned Perſon) juſtify their depoſing of Kings; as we ſaw in the laſt Age, that ſuch reaſons as of late have been urged, to incapacitate the Children of King *Charles* the Firſt from the hope of Succeſſion, *viz.* Popery and Arbitrary Government, did embolden men to dethrone and murther the Father, who was actual King. For if it were once yielded that the Houſes had a Right in themſelves, to take care for the *Salus populi*, that none but ſuch Princes ſhould ſucceed, who were approved of by the prevailing Faction in their body, nothing but confuſion would follow, one Party having their Votes ſeconded by force one time, and a quite contrary another; yet all pretending the Publick Weal: and ſo a large breach ſhould be made (by pretending to ſtop one dangerous Succeſſor) to the inflowing of ſucceſſive Uſurpers, and thereby the Crown ſhould not only be ambulatory, but unſtable upon every head that wore it, and alwaies in danger of a bloody ſurpriſe; till at laſt the *Regalia* being ſecured from the expectant Heir, the Factious would find a way to pillage them from the preſent Soveraign, and convert them into a Mace for an Houſe of Commons.

(*d*) Liberty of Subject, *p.* 25.

(*e*) *Jus Regium, p.* 167.

I writ this Part with greater Enlargements, in anſwer to the plauſibleſt Arguments for the Bill of Seclusion, while that matter was in the hotteſt agitation. But ſince there will be no need of dilating upon that Subject (now that God Almighty hath ſo ſignally determined the Controverſie, by the peaceable ſettlement of his Majeſty upon his Throne) I ſhall cloſe this Chapter, with ſome few remarks of the miſeries have been brought upon Kingdoms, and eſpecially upon this, by the disjoynting the Succeſſion.

So we read what dreadful (*f*) miſchiefs aroſe from *Pelops* preferring his younger Son to the Kingdom of *Mycene*: from *Oedipus* commanding that *Polynices* his Youngeſt Son ſhould reign interchangeably with the Eldeſt: From *Pariſatis* the Queen of *Perſia*'s preferring her Youngeſt Son *Cyrus*, to her Eldeſt *Artaxerxes*: From *Ariſtodomus* admitting his two Sons *Proclus* and *Euriſthenes*, to an equal ſhare in the *Lacedemonian* Throne. The like obſervations are to be made in the Succeſſion of *Ptolomæus Lagus*, and *Ptolomæus Phiſco*; In the Sons of *Severus*, in the Succeſſion of *Sineſandus*, who killed his brother *Suintill* rightful Heir of *Spain*, and that of *Sforza* and *Francis* Duke of *Milain*, and thouſands more; in all which, either the Uſurpers, or the Kingdoms

(*f*) *Jus Regium, p.* 166.

The Miſeries which Kingdoms have ſuſtained where the Succeſſion hath been interrupted.

Kingdoms that obeyed them, perished utterly, or were brought to great ruine.

In *Britain* the whole Nation of the *Picts* were extirpated, by the endeavour of that People to hinder *Keneth* Son of *Alpinus*, from possessing the Kingdom as right Heir of *Fergusiana*, Sister of *Mordred* their King. In *England* the Usurpation of *Harold*, upon the Right of *Edgar*, opened the passage to *William* the Conqueror. The Usurpations of *William Rufus*, and *Henry* the First, upon their Brother *Robert*, and of King *Stephen*, upon the Empress *Maud*, were accompanied with great effusion of Blood: So that a great part of the ancient *Norman* Nobility, (both such as resided there, or were transplanted hither) were slain or grievously harassed. The Usurpation of King *John*, upon his Nephew *Arthur*, caused great disquiets, during his Reign, and the effects lasted a great while after. The removal of King *Richard* the Second by *Henry* the Fourth, occasioned those bloody Wars, and most miserable devastations, betwixt the Houses of *York* and *Lancaster*; during which Usurpation (before the Crown was setled upon *Edward* the Fourth) Historians reckon no less than seventeen pitched Battels, and eight Kings and Princes of the Blood slain, and put to death; and that forty six Dukes and Earls, besides innumerable Barons and Gentlemen, and above 200000. common People were slain and destroyed, in the space of Sixty Years. To which we may add the cruel death of *Edward* the Fifth, and his Brother, by their bloody Unckle, and his own miserable end; and the calamitous fall of the Lady *Jane Grey*, and her Noble Relations.

All which Princes (although for the supporting their unjust Claims, Invasions and Usurpations of the Crown, they procured Parliamentary concurrence, and popular Establishments yet) after so great effusion of blood, could not, in reality, transfer the Right from the next Heir of the blood, but at last all centred again in the Right Heir.

ERRATA.

ERRATA.

The Stationer before the Delivery, or the Owner before Peruſal, is deſired to Correct theſe.

PAge 7. line 31. for *Babarous* read *Barbarous*. for *und* r. *and*. & l. 42. for *wins* r. *wires*. p. 13. l. 6. for *Preſumption* r. *Reſumption*. p. 17. l. 5. for *who* r. *where*. p. 44. l. 45. for *removeable* r. *removal*. p. 47. l. 27. for *purity* r. *parity*. p. 63. l. 26. for *Herds* r. *Hords*. p. 81. l. 18. for *third* r. *fifth*. p. 83. l. 46. for *than* r. *not*. p. 92. marg. l. 5. for *mediocrita* r. *mediocriter*; and below, for *ad Clement.* r. *ad Cluentem*. p. 133. l. 48. after *ſoever* r. *I*. p. 141. l. 36. dele *That*. p. 150. l. 28. for *Peace* r. *Grace*. p. 152. l. 27. for 681. r. 6 *E*. 1. p. 160. l. 43. for *Sarſon* r. *Sarron*. p. 162. l. 12. for *Fenix* r. *Ferrix*. l. 48. after *rewards* add *be*. p. 167. l. 18. after *find* add 4, p. 176. l. 5. for *implied* r. *imployed*. l. 32. for *Framiæ* r. *Frameæ*. p. 180. l. 46. for *Wargild* r. *Weregild*. p. 181. l. 10. for *many* r. *money*. p. 194. marg. l. 17. for *King Edward's* r. *King Edmund's*. p. 197. l. 41. for *Northrigena* r. *Northwigena*. p. 199. l. 19. for *Markeſus* r. *Markerus*. p. 216. l. 11. for *Silvanſet*. r. *Silvanect*. p. 222. l. 36. for *Aubert* r. *Hubert*. p. 245. l. 18. for *Bochan* r. *Boetian*. p. 266. l. 3. for *whereas* r. *where*. l. 11. for *Mulolacu* r. *Malolacu*. l. 18. for *Mauleveren* r. *Mauleverer*. p. 291. l. 36. for *Hull* r. *Hall*. p. 321. l 13. dele *having*. p. 335. l. 12. for *Privileges* r. *Prerogatives*. p. 341. l. 8. for *Salteyn* r. *Salveyn*. p. 376. l. 33. for *dies* twice, r. *diu*. p. 380. l. 24. for *ele* r. *ælc*. and in marg. for *App.* r. *Upp*. p. 387. l. 6. for *tye* r. *lay*. p. 389. l. 5. after *puniſhing* add a Period. l. 7. for *almoſt* r. *all, moſt*. l. 13. for *Bretan* r. *Butan*. l. 14. for *ſorda* r. *eorda*. p. 400. l. 28. for *albe* r. *able*. p. 419. l. 2. for *Hiſparians* r. *Hipparians*. l. 3. for *Cleotimac* r. *Cleotimas*. l. 17. for *Peleponenſian* r. *Peleponeſian*. and for *Ob* r. *Obe*. p. 427. for *Fifthly, Sixthly*, and *Seventhly*, r. *Fourthly, Fifthly, Sixthly*. p. 430. l. 13. for *keep* r. *help*. p. 437. l. 24. for *hopes* r. *hops*. p. 446. l. 37. for *end* r. *and*. p. 452. l. 31. for *Fung* r. *Fangs*. p. 459. l. 1. for *Brats* r. *Bruti*. p. 461. l. 7. for *Colbar* r. *Cobham*. l. 25. for *Rebellious* r. *Rubellius*. p. 462. l. 43. for *rare* r. *race*. p. 467. l. 28. for *Præter* r. *Prætor*. p. 468. l. 1. for *diſcovered* r. *deſcribed*. p. 469. l. 11. for *milder* r. *middle*.

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